BRITISH COLUMBIA

INDUSTRIAL RELATIONS COUNCIL

1987

ANNUAL REPORT

British Columbia Cataloguing in Publication Data
British Columbia. Industrial Relations Council.
Annual report. -- 1987 -

Continues: Labour Relations Board of British Columbia. Annual report of the Labour Relations Board of British Columbia for the year ... ISSN 0319-0404.
ISSN 0838-0899 = Annual report - British Columbia. Industrial Relations Council

1. British Columbia. Industrial Relations Council - Periodicals. 2. Arbiration, Industrial - British Columbia - Periodicals. 3. Labor disputes - British Columbia - Periodicals.

HD8101.5.B74B74 354.7110083'2

TABLE OF CONTENTS

	Letter of Transmittal	
	Commissioner's Message	1
I	The Council	3
	Organization Chart	7
II	Members of the Council	8
III	Statutory Amendments	12
IV	Practice and Procedure Before the Council	19
V	Highlights of Council Decisions	26
VI	Caseload	39
VII	Appendix of Statistical Tables	54

INDUSTRIAL RELATIONS COUNCIL

February 26, 1988

The Honourable Lyall Hanson
Minister of Labour and Consumer Services
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Minister:

Herewith the Annual Report of the Industrial Relations Council, for the year ended December 31, 1987.

Respectfully submitted,

Edward R. Peck
Commissioner

:rew
encl

1275 WEST SIXTH AVENUE
VANCOUVER, B.C. V6H 1A6

TELEPHONE: (604) 660-1300
FACSIMILE: (604) 660-1322

COMMISSIONER'S MESSAGE

Nineteen eighty-seven was a landmark year in terms of the development of collective bargaining and labour relations legislation in British Columbia. On July 27, 1987, major portions of the Industrial Relations Reform Act, 1987 ("Bill 19") became law by enactment of B.C. Regulation 246/87. Bill 19 made many significant amendments to the Labour Code, R.S.B.C. 1979, c.212, including changing its title to the Industrial Relations Act (the "Act"), and continued the existence of the Labour Relations Board (the "LRB") under the aegis of the Industrial Relations Council (the "Council").

The Industrial Relations Council not only perpetuates the adjudicative responsibilities of the LRB, but has an expanded jurisdiction under the Act to monitor all labour disputes in the province, and to assist parties in the resolution of collective bargaining conflicts. In order to accommodate these comprehensive responsibilities, the Act establishes a new administrative structure for the Council, details of which will be provided in a subsequent chapter of this Report. Briefly, the commissioner is the head of the Council, which consists of two separate divisions, the Industrial Relations Adjudication Division (the "Adjudication Division"), and the Disputes Resolution Division. The Act requires the commissioner to name one of the vice chairmen of the Council as chairman of the Adjudication Division and another as chairman of the Disputes Resolution Division. A third vice chairman is designated registrar of the Council.

With the proclamation of Bill 19, the appointments of LRB members were terminated. I will not attempt to mention by name all the individuals who served as LRB appointees during 1987, but note that the citizens of the province, in particular the labour relations community, owe a debt of gratitude to them for their service.

With the amalgamation of adjudication and dispute resolution services, the number of staff alone dictated that the Council would require a new home. Section 22 of the Act requires that the principal office of the Council be at or near Vancouver, the central location for labour relations activities within the province. The LRB premises had been located at 1275 West 6th Avenue, in the City of Vancouver, since October 26, 1979. A great deal of effort was directed in 1987 to locating and preparing suitable new premises, which will be ready for our use in mid-February 1988. The new address of the Council will be 1125 Howe Street, Vancouver.

In our new building, the Council will benefit from several improved features and additonal staff. In the autumn of 1987, the Council hired a professional librarian who is establishing a very comprehensive labour relations library. We intend that the library will be an important resource, not merely for the Council, but for the labour relations community and general public as well. The Council also hired an engineer with a

specialty in computer application for the position of Manager, Information Services. He is responsible for implementing a sophisticated computer network which will include a case management system, a new word processing system, and software for labour relations statistics. Finally, the melding of adjudication staff with staff formerly with the Mediation Services Branch of the Ministry of Labour has created a large organization with varied personnel requirements, necessitating the appointment of a Manager of Finance and Administration.

Section 27, the "purposes and objects" clause of the Act, requires the Council to exercise its statutory responsibilities "so as to achieve the expeditious resolution of labour disputes". As well, the Council must have regard to the public interest, the rights of individuals and the rights and obligations of the parties before it, among other things. In 1987 much of our energy was directed to reducing the backlog of some 950 cases inherited by the Council. As of December 31, 1987, the caseload had been reduced to 466 active files. We are confident that the new case management system and the initial processing of all cases through the registrar's office, together with a revision of administrative procedures in this area, will result in a more efficient delivery of services to the labour relations community. The Council is dedicated to offering a high level of service in both the adjudication and dispute resolution areas, in keeping with its statutory responsibilities to the labour relations community and the public at large.

I conclude by expressing my gratitude to all members of the Council and its staff for their assistance and support during the challenging period of transition in 1987.

I THE COUNCIL

Section 27(1) of the *Industrial Relations Act* (the "Act") reads as follows:

> "27.(1) The council, having regard to the public interest as well as the rights of individuals and the rights and obligations of the parties before it and recognizing the desirability for employers and employees to achieve and maintain good working conditions as participants in and beneficiaries of a competitive market economy, shall exercise the powers and perform the duties conferred or imposed on it under this Act so as to achieve the expeditious resolution of labour disputes, and for these purposes the council shall have regard to the following purposes and objects:
>
> (a) securing and maintaining industrial peace and furthering harmonious relations between employers and employees;
>
> (b) improving the practices and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees;
>
> (c) promoting conditions favourable to the orderly and constructive settlement of disputes between employers and employees or their freely chosen trade unions;
>
> (d) encouraging the voluntary resolution of collective bargaining disputes;
>
> (e) minimizing the harmful effects of labour disputes on persons who are not involved in the disputes;
>
> (f) providing such assistance to employers and bargaining agents as may facilitate the making or renewing of collective agreements;
>
> (g) gathering and publishing information and statistics respecting collective bargaining in the province."

These purposes and objects form the policy foundation for the Council's comprehensive jurisdiction under the Act, which governs the process of collective bargaining and offers mechanisms to assist in the resolution of labour disputes in both the public and private sectors of the province. In addition to the responsibilities under the Act, the Council is charged with responsibility in labour relations matters under eleven other statutes (see Table B). The Council's expansive jurisdiction is unique among Canadian labour tribunals and requires an administrative structure to accommodate this varied legislative mandate. Section 12(2) of the Act provides that the Council shall consist of a commissioner, vice chairmen, and as many members equal in number representative of employers and employees respectively, as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council. The commissioner is the head of the Council. The Act requires that there be at least two divisions of the Council, one of which the commissioner has designated the Industrial Relations Adjudication Division (the "Adjudication Division"), and the other which he has designated the Disputes Resolution Division. The commissioner is required by the

Act to designate one of the vice chairmen to be chairman of the Adjudication Division and another vice chairman to be chairman of the Disputes Resolution Division. He has also designated a vice chairman as registrar of the Council. The chairmen and registrar report directly to the commissioner, but the two Divisions and the Registry operate as departments administratively independent of each other.

A fourth department of the Council, entitled Finance and Administration, has also been established to administer the personnel, budget, library, and computer requirements for the tribunal as a whole.

The abbreviated organization chart on page 7 offers a visual illustration of the Council's administrative structure. Following is a brief description of the Council's administrative operations.

The Commissioner

As head of the Council, the commissioner has a general obligation to oversee the administration of the legislation and the Council's operations. (The chairmen of the Adjudication and Dispute Resolution Divisions, the registrar and the manager of Finance and Administration all report directly to the commissioner). Pursuant to Section 13 of the Act, the commissioner is empowered to establish panels and refer business to them. Accordingly, the commissioner, on the recommendation of the chairman, appoints the adjudication panels in the Adjudication Division and may himself sit on such a panel to resolve a legal dispute. The commissioner also has significant powers under Part 8.1 of the Act in assisting parties to achieve a voluntary resolution of interest disputes. These powers include the appointment of mediators and fact-finders and the referral of disputes to public interest inquiry boards. The commissioner's office is staffed by an executive assistant, legal counsel and secretary.

The Registrar

Every application received by the Council enters the system through the registrar's office, which oversees the administration and progress of the application as it makes it way through the system until the matter is finally disposed of by the Council. Even applications which under the Act are to be made to the commissioner or chairman of the Disputes Resolution Division must be initiated through the registrar's office which will process and direct them to the appropriate individual. The effective and speedy processing of cases will be augmented by the Council's new computer system. Thus it is particularly important for computerized case monitoring/management purposes, that every application to the Council be processed through the one location of the registrar's department. The registrar is also responsible for the Council's special investigating officers. He assigns them to assist parties to achieve a settlement of a legal issue,

with the goal that a formal hearing and legal adjudication may be unnecessary. Finally, the registrar, as a vice chairman of the Council, may chair or sit as a member of an adjudication panel. A new procedure has been established whereby the registrar, as lone panel member, may dispose of certain applications that lend themselves to summary disposition. This process has contributed to a much speedier disposition of many types of applications. The registrar's staff includes two assistant registrars, three special investigating officers, a secretary and other support staff.

The Adjudication Division

As its name denotes, the Adjudication Division concentrates on adjudicating legal issues in labour relations such as the acquisition and termination of bargaining rights, complaints of unfair labour practices and allegations of illegal strikes, lockouts or picketing activity. In essence, the Adjudication Division continues the function of the former Labour Relations Board. It is not involved in the resolution of interest disputes. The majority of applications to the Council are directed to the Adjudication Division for resolution.

The efforts of the investigating officers achieve a voluntary accommodation in approximately two-thirds of these cases. Notwithstanding the high percentage of voluntary resolution, the Adjudication Division has a heavy caseload which must be dealt with as expeditiously as possible. The Division is managed by a senior vice chairman who is appointed chairman of the Division. The chairman monitors the workload in the Division, deals with any problems that may arise in the scheduling of hearings or other difficulties that may occur in the processing of a given case, and is generally responsible for the efficient provision of the Council's adjudicative services. Thus the new computerized case monitoring/management system will be of great assistance to this chairman. As of December 31, 1987, there were eight vice chairmen reporting to the chairman of the Adjudication Division. Given that he is also a vice chairman of the Council, the chairman may himself chair or sit as a member of an adjudication panel.

Legal services to the Adjudication Division are provided by a staff of six lawyers. The senior solicitor and solicitor are employed on a continuing basis for the Council, whereas other lawyers are hired on temporary contracts. The lawyers report to the chairman of the Adjudication Division through the senior solicitor. They engage in legal research, attend hearings and provide legal advice to the members of the Adjudication Division, as well as represent or assist in representing the Council's interests in judicial review proceedings. The chairman of the Adjudication Division is also assisted by a secretary and other support staff.

The Disputes Resolution Division

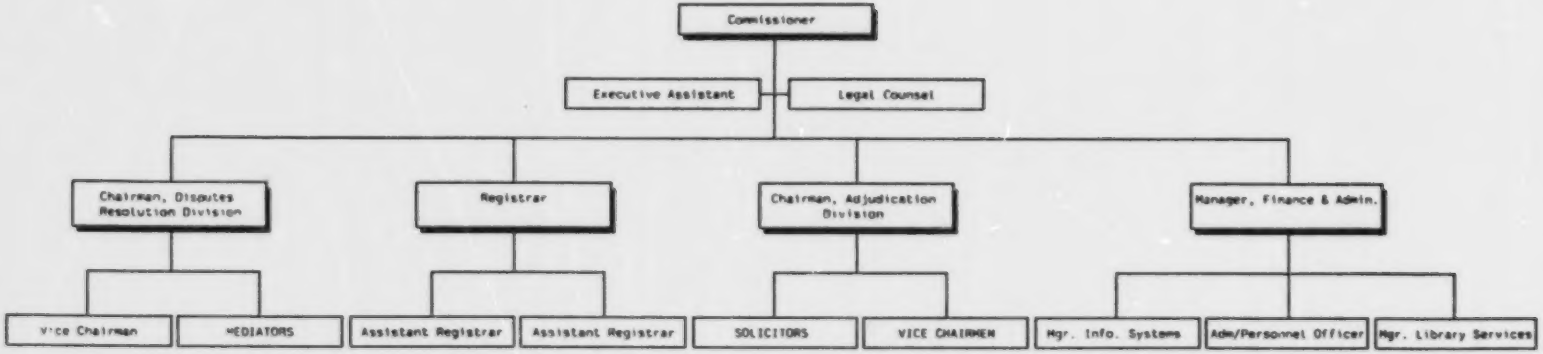
This Division has the statutory responsibility to monitor all labour disputes in the province and to assist parties in the voluntary resolution of collective bargaining conflict. Preventive mediation is encouraged. Moreover, the Division is intended to function as an industrial relations resource centre, for the Act requires that it gather and publish information and statistics respecting private and public sector settlements, labour relations, employment and collective bargaining in the province. The computer system will be a critical tool in this regard. This Division is managed by a senior vice chairman, who is appointed chairman of the Division by the commissioner. The Act empowers the chairman to appoint a mediation officer to assist parties in resolving an interest dispute, at the request of a party, on his own motion, or at the direction of the commissioner. The mediation staff from the former Mediation Services Branch of the Ministry of Labour now form part of the staff of the Disputes Resolution Division. As of December 31, 1987, there were five mediators and one vice chairman, as well as support staff, reporting to the chairman of this Division.

Finance and Administration Group

Finance and Administration is responsible for administering the Council's budget and ensuring that its support personnel, library, computer, and other day-to-day requirements are met. Its manager oversees the administration of the collective agreement which the Executive Committee negotiates with the Staff Association of the Council. The manager of information systems, manager of library services, and the administrative/personnel officer, all report directly to the manager of Finance and Administration. The vice chairmen's secretaries also report directly to him. In 1987, Finance and Administration was heavily involved in directing the preparation of the Council's new premises, organizing the 1988 move of the Council's entire operation, planning an expanded library, and developing a sophisticated computer system to meet the Council's varied needs.

INDUSTRIAL RELATIONS COUNCIL

Abbreviated Organizational Chart



II MEMBERS OF THE COUNCIL

As of December 31, 1987, the Council consisted of the following members:

EDWARD R. PECK *Commissioner*

Mr. Peck graduated from the University of British Columbia in 1949 with the degree of Bachelor of Commerce. He has more than thirty-five years of industrial relations experience in public and private industry, spanning both federal and provincial jurisdictions. The positions he has held include: Chief of Personnel Services, B.C. Power Commission (1955-61); General Manager, Peace Power and Columbia Hydro Constructors (1966-69); Manager of Labour Relations, B.C. Hydro (1970-71); President, Towboat Industrial Relations Association of B.C. (1971-73); Vice Chairman and Chief Administrative Officer, Labour Relations Board of B.C. (1973-79); Commissioner, Compensation Stabilization Program of B.C. (1982-87). He has also served as an Industrial Inquiry Commissioner and mediator/arbitrator in a number of disputes, and as special advisor to various ministers of labour.

G. BUD GALLAGHER *Chairman, Adjudication Division*

Mr. Gallagher had an active career in the Ontario construction industry as a manager and owner before graduating from the University of Ottawa Faculty of Common Law in 1974 with the degree of LL.B, Cum Laude. Immediately thereafter he articled with the Vancouver law firm of Russell & DuMoulin, and spent four years with that firm in the practice of labour law. From 1979 to 1981 he was a vice chairman of the Labour Relations Board of B.C., subsequently returning to private law practice in his own firm, again practicing labour law with an emphasis on collective bargaining and labour relations training. He has taught at the University of B.C. as a part-time lecturer in labour relations. Immediately prior to his appointment as chairman of the Adjudication Division, Mr. Gallagher was chairman of the B.C. Workers' Compensation Review Board.

DARWIN T. BENSON *Chairman, Disputes Resolution Division*

Mr. Benson has many years experience with industry, government and trade unions involving personnel training, negotiation, and administration of collective agreements, and development of labour relations policy. From 1967 to 1979 he was International Staff Representative with the United Steelworkers of America. Mr. Benson was instrumental in forming the Kootenay-Boundary Labour Relations Association, a collective bargaining organization of 24 municipalities. He served as chief conciliation officer, Mountain Region, Labour Canada. From 1982 until his appointment to the Council, he was superintendent of labour relations with Esso Resources Canada Ltd. at Canada Wide Mines and Byron Creek Collieries in British Columbia.

KENNETH E. ALBERTINI *Registrar and Vice Chairman*

Mr. Albertini is an experienced mediator and adjudicator, and has more than twenty years labour relations experience in British Columbia. He has held many positions involving the negotiation and administration of collective agreements, including supervision of operations, Greater Victoria School District #61 (1971-1973), and president of Transport Labour Relations (1976-1977). He served as a mediation officer with the Mediation Services Branch of the B.C. Ministry of Labour for seven years. Mr. Albertini was appointed vice chairman of the Labour Relations Board of B.C. in 1981, and vice chairman/registrar in 1984, which positions he held until his appointment with the Council. He is a member of the Arbitrators' Association of British Columbia.

ROBERT J. ARSENEAU *Vice Chairman*

Mr. Arseneau graduated from the University of New Brunswick in 1968 with a Bachelor of Civil Law degree. He was employed as a solicitor with the New Brunswick Department of Justice from 1968 to 1971, where he provided legal advice to numerous government departments and administrative tribunals, including the Department of Labour, Human Rights Commission, Workers' Compensation Board, and New Brunswick Labour Board. From 1971 to 1975 he was a partner in a private law firm and practiced labour law, representing clients in both the public and private sectors in New Brunswick. He became a member of the Canada Labour Relations Board in 1975 and served five years in that capacity. After admission to the Bar of B.C. in 1981, he joined the labour department of the Vancouver law firm Ladner, Downs, and from 1984 until his appointment with the Council, he practiced labour law in his own law firm. Mr. Arseneau is an experienced adjudicator, and a member of the Arbitrators' Association of British Columbia.

ROBERT W. BABER *Vice Chairman*

Mr. Baber is a graduate of the University of New Brunswick (BPE, 1962; BA, 1964) and has completed one year of postgraduate study at the University of Western Ontario (MA Administration program, 1965). He has an extensive background in labour relations, including the negotiation and administration of many collective agreements with a variety of national and international trade unions. From 1966 to 1971 he was employed with the industrial relations department of Algoma Steel Corporation Limited. He joined Noranda Mines Ltd. in 1971 and held a variety of industrial relations positions in his ten years of service with the company, including manager of labour relations, Canada and USA. He became director of employee relations and administration with Okanagan Helicopters Limited in 1981, and prior to his appointment with the Council, operated his own consulting firm specializing in labour and employee relations.

CATHERINE J. BRUCE *Vice Chairman*

Ms. Bruce received an LL.B degree from the University of British Columbia in 1976. After articling with the Vancouver law firm of Shrum, Liddle and Hebenton, she attended the London School of Economics and Political Science, obtaining a Masters of Law with distinction in 1978. Ms. Bruce has considerable labour law experience. She worked for a short time with the Vancouver law firm of Baigent, Jackson, Blair, and was employed as a business representative with the Canadian Airline Flight Attendants' Association, now the Airline Division of CUPE. In this latter capacity, Ms. Bruce appeared extensively as counsel before the Canada Labour Relations Board, arbitration boards, and the Workers' Compensation Review Board. She also negotiated collective agreements and acted as counsel in airline accident inquiries. Prior to her appointment with the Council, Ms. Bruce was a partner in the Vancouver law firm of Braidwood, McKenzie, Brewer & Greyell, practicing labour law.

A. PAUL DEVINE *Vice Chairman*

Mr. Devine graduated from the University of British Columbia in 1972 with an LL.B degree. After articling with the Vancouver law firm of Alexander, Guest and Company, he was appointed as a compensation consultant with the British Columbia Department of Labour, representing workers and dependents before the Workers' Compensation Boards of Review. Mr. Devine has extensive experience as an adjudicator. He held several positions at the Workers' Compensation Boards of Review/Review Board since his appointment as administrative chairman in 1977, including that of registrar. He was appointed chairman of numerous appeal boards, and adjudicated thousands of cases in his ten years of service with the Boards of Review/Review Board. Prior to his appointment with the Council, Mr. Devine was a commissioner of the Workers' Compensation Board of British Columbia.

BARRY GOFF *Vice Chairman*

Mr. Goff is an experienced mediator and adjudicator. He served as senior special investigations officer with the Labour Relations Board of B.C. from 1976 to 1984, and as senior labour relations officer with Construction Labour Relations Association from 1984 to 1986. In 1986 he was appointed a vice chairman of the Labour Relations Board of B.C., a position he held until his appointment with the Council.

RICHARD LONGPRE *Vice Chairman*

Mr. Longpre graduated from the University of British Columbia in 1976 with a Bachelor of Commerce degree, majoring in industrial relations. He joined Noranda Mines Limited where over the next four years he negotiated collective agreements and coordinated labour relations policy amongst the Noranda Group of companies in Ontario, the Prairies and British Columbia.

In 1981 Longpre joined the Mediation Services Branch of the Ministry of Labour. After three years, he set up an independent labour arbitration and mediation practice. In June 1985, he was appointed a vice chairman with the Labour Relations Board of B.C., a position he held until his appointment with the Council.

ROCHELLE (SHELLEY) C. NITIKMAN *Vice Chairman*

Ms. Nitikman graduated from the University of Manitoba in 1974 with an LL.B degree and articled with the Vancouver law firm of Shrum, Liddle and Hebenton. She was employed as a staff lawyer with the Legal Aid Society of British Columbia, established her own law firm practicing family law, and was appointed by the ministry of Attorney General as a family court advocate. Ms. Nitikman has considerable adjudication experience. In addition to arbitration appointments, she was appointed in 1980 as a chairman of the Workers' Compensation Boards of Review, and in her five year term adjudicated approximately 4000 cases. Prior to her appointment with the Council, Ms. Nitikman was enrolled in the LL.M program at the University of Dalhousie. She is completing her thesis on the subject of industrial relations dispute resolution.

NORA PATON *Vice Chairman*

Ms. Paton graduated from the University of McGill in 1964 with a Bachelor of Nursing degree and from the University of British Columbia in 1976 with a Masters in Education (Adult Education) degree. She has an extensive background in labour relations. Ms. Paton joined the Registered Nurses Association of B.C. in 1969. The labour relations division of the Association subsequently become the B.C. Nurses Union, and Ms. Paton ultimately became its chief executive officer. In her sixteen years with those organizations, she participated in the negotiation and administration of many collective agreements, as well as in the mediation and arbitral processes. In 1980 she was appointed as a part-time member of the Labour Relations Board of British Columbia. In 1986 Ms. Paton was appointed a vice chairman, a position she held until her appointment with the Council.

III STATUTORY AMENDMENTS

The Labour Code was enacted in 1973 and proclaimed in force in several stages throughout 1974. It has been revised numerous times since then. Some amendments have involved technical refinements only while others have introduced substantive changes. The LRB's past annual reports describe the amendments that were made up to and including the year which was the subject of the particular report, and hence this report will not refer to amendments made prior to 1987. Of all the amending legislation, the Industrial Relations Reform Act 1987, S.B.C. 1987, c.24 has made the most extensive changes with some 64 sections amending the Labour Code. The title of the Code was changed to the Industrial Relations Act. The Industrial Relations Council was established to continue the adjudicative operations of the LRB and to offer interest dispute resolution services as well. While not all of the amendments will be discussed, a brief summary of the more significant amendments follows. Only summaries are given and thus for a proper understanding of the Act, reference must be made to the actual language of the Act and any Council decisions which interpret the statutory language. The section references correspond to sections of the Industrial Relations Act.

Section 1 - Definition of "Person":
The definition has been amended to exclude a person in respect of whom collective bargaining is regulated by the Canada Labour Code.

Section 2(3): A new provision which affirms a person's freedom of expression provided no undue influence, intimidation, coercion or threats is used.

Section 2(4): A new provision prohibiting discrimination or intimidation of a person who has participated in proceedings under the Act, exercised a right under the Act, or who may do so.

Section 2(5): A new provision for expedited resolution by the Council of a complaint that employment has been terminated due to the exercise of a right conferred by the Act.

Section 4.1: A new provision prohibiting certain "hot cargo" agreements and other agreements whereby an employer agrees to cease or refrain from dealing in the products of another employer or to cease doing business with another person.

Section 5.1: A new provision prohibiting job loss or other job-related discrimination due to lack of union membership, unless the employee has failed to pay

standard dues and assessments, or engaged in activity against the trade union contrary to the Act.

Section 7: Amendments to promote equitable "hiring-hall" practices and to require a trade union to carry out its function of representation under Section 7 in a fair and lawful manner.

Section 9.1: A new provision rendering void agreements between employers and trade unions respecting the terms and conditions of employment, or respecting membership or non-membership in a trade union, of employees of another employer, unless the agreement relates to construction work performed on a construction project.

Section 11: An amendment empowering the Council to exempt an employee, because of his or her religious convictions or belief, from paying dues to a trade union, provided that an amount equivalent to dues is remitted to charity.

Section 11.1: A new provision requiring a trustee of a local trade union to file information with the Council outlining the terms under which it will be exercising supervision and control over the local trade union; a trusteeship may not continue for longer than one year unless the Council consents to an extension, which may allow the trusteeship to continue up to one more year.

Section 27: Amendments to the "purposes and objects" which the Council must consider; new considerations include the rights of individuals and the desirability for employers and employees to achieve and maintain good working conditions as participants in and beneficiaries of a competitive market economy; new objectives include the expeditious resolution of labour disputes, encouraging the voluntary resolution of labour disputes, minimizing the harmful effects of labour disputes on persons who are not involved in the disputes, providing such assistance to employers and bargaining agents as may facilitate the making or renewing of collective agreements, gathering and publishing information and statistics respecting collective bargaining in B.C.

Section 32: An amendment removing the requirement to obtain the Council's permission in order to proceed with a lawsuit claiming compensation for injury or losses suffered as a consequence of conduct contravening Part 5 of the Act.

Section 37: An amendment to the test of when the Council may treat two or more associated businesses as one employer for the purposes of the Act; the businesses must be under the same control and direction; the Council's decision to treat businesses as one employer shall apply retroactively only if the Council finds that there has been an attempt to evade collective bargaining obligations under the Act.

Section 43: An amendment requiring that a representation vote ordered with respect to an application for certification be conducted within ten days after the date of the application.

Section 52: An amendment requiring that a representation vote ordered with respect to an employees' application for decertification be conducted within ten days after the date of the application.

Section 53: Amendments to the circumstances in which union successor rights apply:

these amendments clarify that:

(1) For union successorship rights to apply, the entire business or a substantial part of it must change hands.

(2) The skills or abilities of an individual do not of themselves constitute a business.

(3) Neither will a successorship apply merely because business functions which are carried on at a particular location are similar to the functions which were carried on by the unionized firm which formerly operated at that same location.

(4) Finally, union certification will no longer apply if the unionized business or a substantial part of it goes bankrupt and is sold or otherwise transferred by the trustee in bankruptcy, unless the Council is satisfied that there was an attempt to evade collective bargaining obligations under the Act.

Section 59 (6): An amendment which requires the Council to grant an employer's application to be deleted from an employers' organization accreditation, where the employer has been included in the accreditation for two years and the application is made within nine months of the expiry date of all collective agreements entered into on the employer's behalf by the organization.

Section 74: An amendment requiring an employer to give at least ninety days notice to the union before introducing a technological change in the work place that will affect the job security or impact on the employment conditions of a significant number of the union employees.

Section 78: The definition of "technological change" now refers to the introduction by the employer of a different kind of equipment or material to the business, or a change in work methods related to the introduction of a different kind of equipment or material used in the business.

Section 79.1: A new provision deeming every collective agreement to state that there shall be no strikes or lockouts so long as the agreement continues to operate.

Section 80: A new provision requiring that collective bargaining take place in accordance with the Act prior to the taking of a strike or lockout vote.

Sections 81 and 82: Amendments to the conditions precedent for a legal strike or lockout; written notice of the strike or lockout must be given to the other party and filed with the chairman of the Disputes Resolution Division; if a mediator is appointed before a strike or lockout commences, no strike or lockout may be commenced by a party until 48 hours after the party has been advised by the chairman that the mediator has reported to him about the dispute; if a fact finder has been appointed before a strike or lockout commences, no strike or lockout may commence until 48 hours after the parties receive a copy of the fact finder's report from the chairman.

Section 85: Amendments to clarify the limits of permissible picketing under the Act.

Part 8.1 of the Act - "Disputes Resolution"

This is a new Part in the Act, establishing a comprehensive scheme to monitor collective bargaining disputes in B.C. and make available appropriate assistance to parties having difficulty resolving interest disputes. The Act requires parties to file copies of their collective agreements with the Disputes Resolution Division as well as the Minister of Labour. No strike or lockout may commence until at least 72 hours notice of same has been filed with the Disputes Resolution Division. Where parties have commenced collective bargaining, the chairman of the Disputes Resolution Division, or a person he appoints, may inquire into the progress of the bargaining, requesting

information from the parties if required. When a strike or lockout commences, the employer or trade union taking the action must immediately inform the chairman in writing. All these provisions will enable the Disputes Resolution Division to carry out its obligation to monitor labour disputes. When the chairman considers that a dispute exists, when a strike or lockout notice has been served, or when a strike or lockout commences, he must report the matter to the commissioner. The Disputes Resolution Division will continue to report to the commissioner on a regular basis regarding a strike or lockout situation so that the commissioner will be kept up-to-date on the progress of events.

The chairman of the Disputes Resolution Division may appoint a mediation officer to assist parties in resolving their collective bargaining disputes, acting at the request of a party, on his own motion, or at the direction of the commissioner.

The mediation officer is required to report to the chairman within ten days of meeting with the parties, or within 20 days of his appointment, whichever is less, or within a longer period of time with the parties' consent and as directed by the chairman. If the mediation officer is appointed before a strike or lockout has commenced, a party is prohibited from striking or locking out until 48 hours after being advised by the chairman that the officer has reported to him about the dispute. Upon direction by the chairman or request of a party, the mediation officer must provide the parties with a report concerning their dispute which may include recommended terms of settlement.

The commissioner has a special obligation to monitor all labour disputes in B.C. through the medium of the Disputes Resolution Division. The commissioner also has a statutory obligation to keep the Minister informed respecting strikes and lockouts that occur or are threatened.

When the commissioner receives a report from the chairman of the Disputes Resolution Division that a collective bargaining dispute exists in the public or private sector, he may act in a variety of ways to facilitate a resolution of the dispute. He may:

1. Direct the chairman of the Disputes Resolution Division to appoint a mediation officer to confer with the parties.

2. Appoint a fact finder. A fact finder must make a report on the dispute within 20 days of his appointment or after a longer period the chairman approves. The report is not binding on the parties but may be made public by the chairman. No strike or lockout may be commenced until 48 hours after the parties receive a copy of the fact finder's report.

3. Confer with the parties himself and recommend to them the manner in which their dispute should be resolved.

4. Refer the matter to a public interest inquiry board, which may hear evidence and submissions from the public as well as the parties to the dispute. The commissioner may appoint a person as a public interest advocate to represent the public interest at the inquiry. No person directly affected by the dispute may be appointed to the board of inquiry. The board will attempt to effect a settlement but if it fails to do so within 30 days (or such longer time as may be agreed by the parties or fixed by the commissioner), it must report to the commissioner and make recommendations for settlement. In its report and recommendations, the board must have due regard to the public interest, and where a party is a public sector employer, the board must consider the same criteria as applied by arbitrators of public sector disputes. The commissioner may review the report to ensure that the board has given due regard to the criteria and may direct the board to reconsider if he feels it has erred.

   The commissioner is required to give the board's recommendations to the parties and he may release them to the public as well. The parties may adopt the board's recommendations which then become binding on them as part of the terms and conditions of their collective agreement. If one or both of the parties do not advise acceptance or rejection within ten days of receiving the recommendations, the commissioner may direct a vote on the matter by the employees and/or employers to the dispute. If a majority vote to accept the board's recommendations, they become binding on the parties as part of their collective agreement.

   or

5. If a strike or lockout has commenced and the commissioner considers that it would be in the public interest to have the employees vote on the offer last received by the trade union from the employer, he may direct that such a vote take place. Similarly, he may direct that employers in an employers' organization vote on the offer last received by the organization from the union.

   Moreover, before a strike or lockout commences, the employer involved in the dispute can require the commissioner to direct a vote on the employer's offer last received by the union. Similarly, the trade union involved in the dispute can require the commissioner to direct a vote of the employers in an employers' organization on the union's offer last received by the organization.

Where the Minister of Labour, after receiving a report of the commissioner respecting a dispute, considers that the dispute poses a threat to the public interest (i.e. a threat to the economy of the province or to the health, safety or welfare of its residents or to the provision of educational services in the province), he may do either or both of the following:

1. Order a cooling off period not exceeding 40 days during which no strike or lockout may occur. If a strike or lockout has already commenced, it is suspended for the period ordered by the Minister.

2. Direct the Council to designate essential services.

Sections 137.97 through 137.99 of the Industrial Relations Act concern the power of the Legislative Assembly or Lieutenant Governor in Council to direct an end to a dispute. These sections have not been proclaimed in force as law and accordingly will not be discussed in this report.

IV PRACTICE AND PROCEDURE BEFORE THE COUNCIL

Significant amendments were introduced by the Industrial Relations Reform Act, 1987, including an expanded jurisdiction and new "purposes and objects" in Section 27 of the Act, not the least of which is an obligation that the Council achieve the "expeditious resolution of labour disputes". These statutory changes have motivated the Council to examine its practices and procedures with a view to providing a more efficient service to the labour relations community. The review process is ongoing, but some changes have already been implemented in this area. In this chapter, we will summarize the basic practice and procedure before the Council, emphasizing the new developments. Only summaries are given and thus reference must be made to the actual Rules or Regulation in question, in order to fully understand the Council's practice and procedure.

REGULATIONS

The Labour Code Regulations (B.C. Reg. 522/73) were repealed effective July 27, 1987 by B.C. Reg. 247/87. On that same date, pursuant to Section 21(2) of the Industrial Relations Act and with the approval of the Minister, the Council issued the Industrial Relations (Practice and Procedure) Regulation, which is referred to as the Industrial Relations Council Rules (the "Rules").

One important area not covered by the Rules is the practice and procedure relating to votes under the Act. Pursuant to Section 55 of the Act, voting procedures must be "in accordance with regulations made by the Lieutenant Governor in Council". Accordingly, by B.C. Reg. 247/87, the Lieutenant Governor in Council made the Industrial Relations (Voting) Regulation, effective July 27, 1987. Therefore, there are two Regulations governing practice and procedure under the Act: one Regulation enacted by the Council which is known as the "Rules", and another enacted by the Lieutenant Governor in Council applying to votes.

GENERAL FILING REQUIREMENTS UNDER THE ACT, RULES, AND VOTING REGULATION

One important procedural matter must be emphasized: the registrar's office is the focal point of intake for all applications to the Council. Therefore, pursuant to Rule 3 of the Rules, every proceeding or matter before the Council is to be commenced by the filing with the registrar of a written application in duplicate. This includes applications directed to the commissioner or the chairman of the Disputes Resolution Division: they must be filed with the registrar's office which will then process them through the appropriate Division, to the appropriate person.

Industrial Relations Act

Section 11.1 (Trusteeship over local unions) - trustee trade union must, within 60 days after it has assumed supervision or control over the subordinate trade union, file with the Council a statement, verified by the statutory declaration of its principal officers, setting out the terms under which supervision or control is exercised (and other information as the commissioner may require).

Section 62(2) - A copy of the notice to commence collective bargaining with an endorsement stating where, when and to whom the original notice was given, must be sent by registered mail to the chairman of the Disputes Resolution Division, within three days after notice was given to the other party.

Section 67(1) - Each party to a collective agreement must file a copy with the Minister and a copy with the Council within seven days after executing the agreement [see Rule 34(1)].

Section 67(2) - Every employer executing a collective agreement shall, within 14 days after filing a copy of the collective agreement with the Council, file compensation particulars on matters contained in the collective agreement, in the form and manner required by the commissioner [See Rule 34(2)].

Section 81(3): (Note the conditions precedent to a lawful strike) - A copy of the written strike notice given to the employer by the trade union must be filed with the chairman of the Disputes Resolution Division.

Section 82(3): (Note the conditions precedent to a lawful lockout) - A copy of the written lockout notice given to the trade union by the employer must be filed with the chairman of the Disputes Resolution Division.

Re: Sections 81(3) and 82(3) - see Canteen of Canada Ltd, IRC No. C40/87.

Section 105 - Arbitration board must file a copy of its award with the Minister within 10 days of issuing the award.

Section 137.4 - Trade union or employer commencing a strike or lockout must immediately inform the chairman of the Disputes Resolution Division in writing, specifying the date the strike or lockout commenced.

Section 137.7(4) and (5): ("Offer Last Received" Votes) - See Merrett Management Ltd, IRC No. C34/87

- Applicant for a vote must file a statutory declaration setting out allegations of fact in support of the application. (All questions regarding the information that may be required must be directed to the registrar).

- Attached to the statutory declaration must be the offer of the applicant last received by the other party. As directed by the registrar, the offer should preferably be in the form of a memorandum of settlement or proposed collective agreement or otherwise in writing with any proposed changes from the previous agreement (if any) clearly highlighted.

Section 137.8: (Essential Services) - The Minister, after receiving a report from the commissioner respecting a dispute, may order a cooling off period and/or direct the Council to designate essential services.

- Requests for essential service designations must be made to the commissioner in a comprehensive letter setting out the facts to support the request. All questions regarding the information required in the letter must be directed to the registrar.

Section 137.96(10) - (Applications to commissioner for review of a public sector interest arbitration award)

- An application for review must be made within seven days after receipt of the arbitration award.

- The application must set out grounds for review and complete arguments in support, and be delivered to the other party simultaneously upon the application being made to the commissioner. (Note that under Section 137.96(12), the commissioner's decision must be rendered within 30 days after receipt of the application, unless the parties agree to an extension).

Industrial Relations Council Rules:

Rule 3 Every proceeding or matter must be commenced by the filing with the registrar of a written application in duplicate.

Rule 5 Council may require facts to be verified by statutory declaration.

Rule 9 Except in certification applications, a reply to an application must be filed within five working days after receipt of the copy of the application (unless the Council grants an extension or the Rules otherwise state).

Rule 14 Employers' organizations and trade unions must ensure that Council has an up-to-date copy of its constitution and bylaws, and a statement of the names and addresses of its officers.

Rule 20 Application for reconsideration of a Council decision must be made within 15 working days after its publication and set out particulars of the issues in dispute and the reasons for seeking reconsideration. (N.B. a letter simply requesting reconsideration will not suffice - the appropriate grounds and full reasons in support must be included).

Rule 22 Applications under Section 52(8) of the Act (employer's application for (b)(ii) cancellation of union certification) must be filed with a statutory declaration verifying the information set forth in the application.

Rule 27 Applications under Section 108 of the Act for a review of an arbitration award must be made in writing within 15 working days after the date of publication of the award, include copies of the award and the relevant collective agreement, provide a detailed statement of the grounds and arguments upon which the application is based, and indicate the remedy sought. Indication must be given that other parties have been or will be served with the application.

A reply to an application under Section 108 of the Act must be made in writing within 15 working days after service of the application and contain a detailed statement of the argument and appropriate disposition of the case. Indication must be given that other parties have been or will be served with the reply.

Rule 29 A complaint alleging that an employee has been discharged or dismissed contrary to Section 2, 3(3)(a) or (c), or 5.1 of the Act must be made in a form set by the Council and include a statutory declaration detailing the material facts upon which the complainant relies.

Rule 30 A complaint under Section 28 of the Act or a violation of Sections 2, 3 4, 5, 5.1, 6 or 7 of the Act (other than a complaint under Rule 29) must set out the names of the relevant parties, the order sought, law and facts upon which the complaint is based, an outline of what is intended to be proven, and particulars of amount of compensation sought, if any.

Rule 31 A complaint under Section 28 of the Act alleging a violation of Part 5 of the Act must, in addition to the requirements of Rule 30, include a statutory declaration detailing the material facts upon which the complainant relies, the proposed date, time and location of the hearing requested, and if an expedited hearing is requested, specifying the nature of any anticipated harm.

Rule 32 Applications under Sections 81(2) or 82(2) of the Act (alleging a strike or lockout vote was not held in accordance with the Act or the regulations) must be in writing, specify the grounds for the allegation, and be made within five working days after the date on which the statement and return of poll is filed with the Council (unless an extension is granted by the Council).

Also note: The Council has designated forms for specific types of applications. Check the Rules for the phrase "in a form set by the Council", which may indicate a designated form.

Industrial Relations (Voting) Regulation:

Part 2, Regulation 6: A trade union or employers intending to conduct, as the case may be, a strike or lockout vote, must notify the Council in a form set by it within a reasonable time prior to the holding of the vote, of the names of the parties engaged in the dispute, the name of the returning officer, and attach a sample of the notice of poll, the ballot and a list of eligible voters.

Regulation 7: Both the Minister and the Council must be notified in writing of the name and address of the returning officer.

See: Canteen of Canada Ltd, IRC No. C40/87

DISPOSITION OF APPLICATIONS - ADJUDICATION DIVISION

Disposition by the registrar: A large number of cases are processed on a strictly administrative basis. A new policy has been implemented whereby the registrar may summarily dispose of certain applications. Such applications include:

- simple variance applications involving a change in name or address
- applications under Section 96(1) which cannot be resolved by an investigating officer and it is appropriate to refer them back to the parties to be dealt with through the dispute resolution mechanisms in their collective agreement
- decertification applications under Section 52(8) where no persons have been employed in the bargaining unit for the two year period stipulated and the statutory requirements are otherwise met
- applications for decertification under Section 52(2): ordering a representation vote, and, if no unfair labour practice is alleged, cancelling the certification
- applications for deaccreditaton which meet the statutory requirements
- applications to withdraw
- applications under Sections 36 and 108 which are out of time and for which no valid argument for untimeliness is presented
- such other applications as lend themselves to summary disposition

Other Dispositions without a Hearing: Other kinds of cases are also processed without a formal hearing. The application or complaint is investigated by an industrial relations officer of the Ministry of Labour who files a report with the Council. This report, together with the parties' submissions, is reviewed by a panel of the Council. If the matter can be decided upon the basis of the materials on file, a decision is made without a hearing.

In cases which are contested, the Council often attempts to achieve a voluntary resolution before proceeding to the stage of a formal hearing and adjudication. This may involve the efforts of an industrial relations officer or special investigating officer, for example. This policy is especially important in the following areas: unfair labour practice complaints, Section 96(1) disputes, and strikes and picketing complaints. In these areas, the Council achieves a voluntary accommodation in approximately two-thirds of the cases.

Hearings: Contested cases which are not settled and which cannot be decided upon the basis of the materials on file, will be the subject of a hearing before the Council. With respect to applications for certification for units of unorganized employees, a hearing is always held. Section 43(1) of the Act requires that a representation vote ordered by the Council on a certification application must be conducted within ten days after the date of the application. Accordingly, certification applications must be heard expeditiously by the Council, with objections to the application being raised at the hearing. As well, pursuant to Section 2(5) of the Act, where no collective agreement respecting a unit is in force and a complaint is filed with the Council alleging that an employee has been discharged from employment because of the exercise of a right conferred by the Act, the Council must commence a hearing on the complaint within five days of its filing, unless the complaint is settled or withdrawn before then.

In 1987, the Council held 484 hearings, including 264 certification hearings expedited pursuant to the requirements of the Act. A total of 694 hearings were held in 1986, indicating a decrease of 210 in 1987.

Published Decisions: In contested cases that are unresolved by the parties, the Council's general practice is to give written reasons for its decisions. These formal decisions explain the Council's findings to the immediate parties and lay down general guidelines about the Council's policy and interpretation of the Act. The formal decisions are numbered and are made available to unions, employers, legal counsel and other interested persons.

In addition to its formal decisions, the Council issues decisions in letter format which contain brief reasons or no reasons at all, and which have no precedential value other than to the particular parties to the application.

Decisions which the Council believes will constitute important precedents for the future are published in a series entitled the Canadian Labour Relations Boards Reports (New Series), which is published by Butterworth & Co. (Canada) Ltd.

V HIGHLIGHTS OF COUNCIL DECISIONS

Freedom of Expression

Section 2(3) of the Act provides as follows:

> "Nothing in this Act deprives a person of his freedom to express his views provided he does not use undue influence, intimidation, coercion or threats".

In Service Employees International Union, Local 244 - and - Focus Building Service Ltd, No. C90/87, a panel of the Council considered this new statutory provision in the context of an unfair labour practice application brought by the union, alleging a violation of Section 3(3)(c) of the Act. The union complained that during an organizing campaign, the employer had intimidated employees to induce them not to join the union. The employer conceded that it was opposed to the unionization of its employees and the panel found that the employer did not maintain a neutral position during the union's organizing campaign, but had sought to influence its employees' choice in the representation vote. One of the employer's representatives conducted a series of meetings and interviews with employees during the campaign. There was no evidence that the representative made untrue statements, nor were any threats made. The representative did state to the employees that the union could not deliver on its alleged promises to achieve a large pay increase, because the employer's customers would not bear the cost of such an increase. The Council found that the representative also made statements to the effect that he had the authority to reward employees who responded favourably to the employer's position. Further, the representative told employees to participate in the representation vote but urged them not to permit anyone to influence their decision. Most of the employees spoke little or no English and the representative employed the services of a foreman as an interpreter during the interviews.

The panel stated that the addition of Section 2(3) into the legislation by the Industrial Relations Reform Act, 1987 eliminated the requirement that an employer remain strictly neutral during the course of a union organizing drive or prior to a representation vote. Moreover, the panel concluded that Section 2(3) is intended to permit expressions of view on matters broader than contemplated by Section 3(3)(g), i.e. statements of fact or opinion reasonably held with respect to the employer's business. However, the panel noted that the right of expression conferred by Section 2(3) is not unqualified, for undue influence, intimidation, coercion or threats may not accompany the expression. The panel observed:

> The words "intimidation, coercion or threats" evoke, in my view, images of compulsion with its accompanying fear and

> insecurity. Undue influence, on the other hand, appears to contemplate a less blunt form of acting upon the natural vulnerability of employees...In my opinion, undue influence is a species of intimidation. It may be distinguished from the more direct form of equally coercive pressure by a certain subtlety of application. Its effectiveness is perhaps enhanced by this characteristic. The Legislators have clearly stated that the use of such a weapon by an employer has no place in the industrial relations arena.
>
> Whether conduct will be found to constitute undue influence will depend, to a large extent, upon the individual circumstances of each case. That which is permissible and protected free expression of views may depend upon the character of the constituency to which an influence is applied. More sophisticated employees organized by strong bargaining agents may, depending upon the circumstances, be considered to be less vulnerable to pressures which might be found to constitute undue influence if applied to a constituency lacking those advantages. The concept of undue influence is not immutable; it will evolve as situations requiring the Council to define and apply Section 2(3) are experienced.

In the result the panel concluded that the employer had gone beyond permissible employer expression and had intimidated the employees by "the exertion of undue influence". The employees in question were especially vulnerable to influence because of their unfamiliarity with the country, labour relations and the English language. Some of the employer's representative's comments amounted to a promise of benefit if employees voted against the union. Moreover, the statement that the employees ought not to permit anyone to influence their vote was, in the context, clearly an instruction to ignore any views which differed from those held by the employer; given that this message was delivered in the course of employee interviews at the worksite during working hours by an influential manager, the panel found that the message strayed beyond the line of permissible expression under Section 2(3). Finally, the panel concluded that the employer's representative ought to have told the employees that the foreman was performing an interpretation function only and that the message was not necessarily shared by him.

By way of remedy, the panel rescinded the representation vote and ordered that a new representation vote be conducted. The employer was ordered to cease and desist from the type of conduct which the panel had found to violate Section 3(3)(c) of the Act.

The union was given the opportunity of addressing the employees in the bargaining unit at specified working locations, before the second representation vote was to take place.

Jurisdiction to Adjudicate Technological Change Disputes

In Carling O'Keefe Limited - and - Brewery, Winery and Distillery Workers, Local 300, No. C60/87 (appeal of BCLRB No. 249/86), the Council reconsidered a decision which declared that the employer had introduced a technological change in the workplace and which ordered that the employees laid off as a result of the change be reinstated to the seniority list with recall rights for one year. The original panel found that it had jurisdiction to act as an arbitration panel under the Act and to resolve the parties' technological change dispute. In support of its application for reconsideration, the employer argued that the issue of technological change ought to have been adjudicated by an arbitration board under the collective agreement, and that the union was in the wrong forum in seeking to have the matter resolved by the original panel.

The Council observed that Section 74 of the Act requires parties to negotiate adjustment to technological change in their collective agreements. Where the technological change is of such a character that it affects the terms, conditions or security of employment of a significant number of employees to whom the collective agreement applies, and also significantly alters the basis on which the agreement was negotiated, Section 76 of the Act allows either party to refer the dispute to an arbitration board. In this context, Section 78 defines "arbitration board" to mean an arbitration board established under the collective agreement. The Act does not allow the Council an active role in adjudicating technological disputes, and therefore the Council concluded that the original panel had erred in adjudicating the parties' dispute.

The Council stated that while it lacks jurisdiction to adjudicate disputes under Section 76, it still has a role under Sections 107 and 108 of the Act to deal with the concept of technological change. Moreover, Section 38 may, in limited circumstances, allow the Council to give a declaratory opinion relating to the technological change provisions of the Act. But the Council observed:

> In this case the union applied under Section 38 of the Act for a declaration that the employer had introduced a technological change within the meaning of Section 76(1) and for consequential relief pursuant to Section 76(2)(b). Thus its application for a Section 38 declaration was integrally associated with its request to have the Board adjudicate the parties' technological change dispute. We have already determined that the Board lacked the jurisdiction to adjudicate the matter under Section 76. In

> our view it was inappropriate and unnecessary in these circumstances for the Board to give the declaratory opinion sought by the union. The legislative direction in Sections 76 and 78 is that an arbitration board under the collective agreement "shall decide whether the employer has introduced or intends to introduce a technological change"; once it has made this assessment it may then order consequential relief. The Council will be most reluctant to intervene under Section 38 at a primary stage in technological change adjudication when the adjudicative role has been assigned by the Act to boards of arbitration under collective agreements. The power to give a declaratory opinion relating to technological change under Section 38 ought to be employed sparingly and not as a complement to an adjudicative process improperly undertaken by the Council in subrogation of the role of an arbitration board under Section 76.

The Council concluded that the original panel had erred in law in acting as an arbitration board under Section 76 and erred in policy in granting the Section 38 declaration.

Pre-Strike Voting and Notice

Section 81 of the Act, subsections (1) to (3), states:

> 81. (1) A person shall not declare or authorize a strike and an employee shall not strike until a vote has been taken, in accordance with the regulations, of the employees in the unit affected as to whether to strike, and the majority of those employees who vote have voted for a strike.
>
> (2) Where, on application by a person directly affected by a strike vote or an impending strike, or on its own behalf, the council is satisfied that a vote has not been held in accordance with subsection (1) or the regulations, it may make an order declaring the vote of no force or effect, and directing that, if another vote is conducted, it shall be taken on the terms it considers necessary or advisable.

(3) Except as otherwise agreed in writing between the employer or employers' organization authorized by the employer and the trade union representing the unit affected, where the vote favours a strike,

(a) a person shall not declare or authorize a strike, and an employee shall not strike, except in the three months immediately following the date of the vote; and

(b) an employee shall not strike unless

(i) the employer has been given written notice by the trade union that the employees are going on strike,

(ii) the written notice has been filed with the chairman of the Disputes Resolution Division,

(iii) 72 hours, or a longer period directed under this section, has elapsed from the time the written notice was filed with the chairman of the Disputes Resolution Division,

(iv) where a mediation officer has been appointed, 48 hours have elapsed from the time the trade union is informed by the chairman that the mediation officer has reported to him, or from the time required under subparagraph (iii), whichever is longer,

(v) where a fact finder has been appointed, 48 hours have elapsed from the time the fact finder's report has been given to the parties by the chairman, or from the time required under subparagraph (iii), whichever is longer, and

(vi) the trade union which has given written notice is not subject to an order made under Part 8.1 preventing the strike.

Sections 5, 6, 7, 10 and 11 of the Industrial Relations (Voting) Regulation provide:

Application

5. This section applies to a strike vote under Section 81 of the Act and a lockout vote under Section 82 of the Act.

Notification to Council

6. A trade union or employers, as the case may be, shall, within a reasonable time prior to a vote being conducted, notify the council in a form set by it of the name of the trade union and employers engaged in the dispute, such other facts as will adequately identify the dispute, the name of the returning officer appointed under this section and attach a sample of the notice of poll, the ballot and a list of eligible voters.

Appointment of Returning Officer

7. A trade union or employers, as the case may be, proposing to conduct a vote shall appoint a person to be the returning officer to conduct the taking and counting of a vote and shall, prior to the taking of a vote, notify the minister and the council in writing of the name and address of the returning officer.

Preservation of Ballots

10. The council shall preserve and keep all ballots and other documents relating to the conduct of the vote for a period of not less than three months after the date of the taking of the vote.

Observers

11.(1) The council shall appoint a person or persons to be present as observers during the conduct of balloting and the taking and counting of a vote, and the returning officer, deputy returning officer and clerks shall give those persons access to:

(a) the polling places or any other place where votes are taken and counted, and

(b) all lists, records, ballot forms and other documents used in the taking and counting of votes.

(2) Observers appointed under subsection (1) shall be paid compensation fixed by the council from time to time.

In Canteen of Canada Ltd - and - Service Employees International Union, Local No 244, No. C40/87, a panel of the Council considered an application by the employer pursuant to Sections 28 and 38 of the Act alleging that the union had violated Section 81 of the Act and the Industrial Relations (Voting) Regulation. The union had issued a notice of strike vote and notice of poll for a vote to be held on September 3, 1987, and sent copies of these notices to the employer. However, the union did not notify the Council about the vote. The vote was conducted as scheduled and the union, having obtained a strike mandate, issued 72 hours strike notice to the employer. No strike notice was given to the Council. The employer argued that voting for a strike mandate is not a private process between the parties and that the Council plays a key role in monitoring the process by determining eligibility to vote, by appointing observers, and by maintaining custody of the ballots.

The panel was satisfied that the union had breached Section 81 of the Act and the Industrial Relations (Voting) Regulation. It observed that:

> ...the failure of the union to give notice of the strike vote was not an omission of a mere technical nature. The requirement to provide notice to the chairman of the Disputes Resolution Division under Section 81(3)(b) is an integral part of the scheme of Part 8.1 of the

> Act which is to permit the Disputes Resolution Division to monitor collective bargaining between employers and bargaining agents so that it may effectively carry out its function. The requirements under the Regulation of providing notice to the Council have a similar purpose of permitting the Council to supervise the mechanics of the conduct of the vote to ensure the integrity of the process and to eliminate any irregularities.

The panel ordered that if another strike vote were to be conducted by the union, it was to be taken in accordance with Section 81 of the Act and the Regulation.

"Offer Last Received" Votes

Section 137.7(4) of the Act reads:

> Before the commencement of a strike or lockout, the employer of the employees in the affected bargaining unit may request that a vote of those employees be taken as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, and where the employer requests that a vote be taken, the commissioner shall direct that a vote of those employees to accept or reject the offer be held in a manner he directs.

The first application for a vote under this provision was considered by the Council in Merrett Management Ltd - and - Service Employees International Union, No. C34/87. After requesting a vote, the employer's lawyer telephoned a member of the Council and advised him of the employer's intention to withdraw the request. The commissioner, unaware of the conversation, had directed that the vote be held. The employer then notified the Council in writing that its application for a vote was "withdrawn".

The commissioner directed the vote to proceed. In his reasons for decision, he noted that the Council would not be able to administer the Act and deal with the many cases before it in any sensible fashion if parties were able to either initiate or discontinue proceedings simply by way of general comments made in telephone conversations with any of its members. During an oral hearing, a party may address an application to withdraw to the presiding panel. Otherwise, pursuant to Rule 3 of the Council Rules, applications to withdraw (as with all other applications) must be made in writing and filed in duplicate with the registrar. Accordingly, the telephone remarks of the employer's lawyer did not constitute an application to withdraw its request for a vote. The employer's written application to withdraw was untimely because the commissioner had already directed the vote to be held. In any event, the commissioner stated that

the Council retains a discretion to refuse leave to withdraw, and thus even if the written notice had been timely, it would not automatically effect a withdrawal of the request for a vote. Moreover, the commissioner observed that in these circumstances he would have declined to permit the employer to withdraw its request for a vote. He stated:

> While Section 137.7 of the Act is entitled "Intervention by the Commissioner", both Sections 137.7(4) and (5) [the counterpart for trade unions seeking a vote] are, in one sense, forms of "self-help" to resolve a dispute. The lack of discretion on my part underscores the degree of power accorded a party seeking that a vote be held; the option of employing this means of dispute resolution is a matter for the employer to initiate under Section 137.7(4), not the commissioner or the Council. But while the initiation of a request may be viewed as a form of self-help, in fact, it is much more. The significance of a request for a vote is that an important message is thereby communicated to the trade union, the employees in the bargaining unit and other interested persons: the employer is willing to stand behind its offer to the union and have its acceptability to the employees tested by vote. Everyone is alerted to the possibility that resolution of the dispute may be imminent, as the request for a vote triggers a corresponding right of employees in the unit to have their say in the matter. This is because Section 137.7(6) of the Act provides that where a vote favours the acceptance of the offer, "an agreement is thereby constituted between the parties". Hence, a request for a vote must be viewed as a serious step by one party to achieve a voluntary, expeditious resolution of all matters remaining in dispute between the employer and the trade union...
>
> A party considering whether or not to apply under Section 137.7(4) or (5) of the Act should understand the consequences which can flow from a vote favouring acceptance of its offer, and seriously weigh the pros and cons of seeking a vote. A request that the commissioner direct a vote should not be casually made. Sections 137.7(4) and (5) are not to be trivialized by parties merely seeking a tactical manoeuvre and intending to subsequently withdraw their requests.
>
> Section 27 of the Act imposes upon the Council an obligation (among others) to "exercise the powers and perform the duties conferred or imposed on it under this Act so as to achieve the expeditious resolution of labour disputes". An applicant under Section 137.7(4) or

> (5) must be given to understand the gravity of the step which it initiates. When such a request is made, there is imminent potential for a prompt resolution of all matters remaining in dispute between the parties, and hence there is a crucial labour relations purpose to be served by holding the vote. In light of these factors, an application to withdraw a request for a vote under Section 137.7(4) or (5) will only be granted in exceptional circumstances.

The commissioner said that exceptional circumstances justifying leave to withdraw did not exist in the case before him. The parties had been unsuccessful in concluding a first collective agreement, despite the assistance of a mediator. Strike action had recently been commenced by the union. The employer was represented by experienced legal counsel when it requested the vote, and it appeared to have fully appreciated the significance of its request. The facts pointed to the importance of promptly resolving the parties' dispute, and accordingly the vote proceeded as directed.

In Kompleat Janitorial (Vancouver) Ltd. - and - Service Employees International Union, No C.91/87, the commissioner again addressed a request from an employer for a vote pursuant to Section 137.7(4) of the Act. The parties had negotiated a collective agreement with an expiry date of June 30, 1989 and hence the agreement was still in effect. The agreement provided that all monetary items were open for renegotiation on July 1, 1987, and the parties had met to discuss changes in this regard. A memorandum of agreement had been signed but the employees voted against its ratification. The employer submitted another offer to the union but the union did not signify acceptance of it. In requesting a directed vote under Section 137.7(4) of the Act, the employer stated that it believed that a majority of the employees in the bargaining unit would vote in favour of the offer.

The commissioner noted that Section 137.7(4) is an extraordinary provision which enables an employer, in limited circumstances, to reach around the union as exclusive bargaining agent and deal directly with bargaining unit employees. The employer's application would have the Council interpret Section 137.7(4) to require the commissioner to direct a vote upon employer request at any time during the course of collective bargaining toward reaching consensus on a re-opener, albeit a collective agreement binds the parties and there is no potential for strike or lockout in the near future. The commissioner rejected such an interpretation, finding it inconsistent with the purposes and objects of the Act. The commissioner observed:

> A multi-year collective agreement may provide for several "re-openers" during it term. If a vote could be directed under Section 137.7(4) in circumstances where the parties are bargaining under a re-opener provision with no right to strike or lockout upon impasse,

> an employer could conceivably bypass the trade union several times during the term of the collective agreement. In my view, such a result would unreasonably interfere with a trade union's right as exclusive bargaining agent of all of the employees in the unit. It would allow the employer to bargain directly with the employees during the term of a collective agreement by way of intermittent referenda without the prevention of a strike as justification. Such an interpretation of Section 137.7(4) should be avoided, for it runs contrary to the fundamental premise in Sections 46(a) and 27(1)(b) of the Act regarding the exclusivity of a trade union's bargaining rights.

The commissioner refused to order the vote, dismissing the employer's application under Section 137.7(4) of the Act.

Partial Decertification

In Westar Timber Ltd. - and - International Woodworkers of America, Local No 1-405 - and - Certain Employees of Westar Timber Ltd. - and - B.C. Federation of Labour et al, BCLRB No. 47/87, a panel of the LRB dismissed an application by the certain employees (who represented a majority of the office employees in the employer's Castlegar sawmill) to vary the union's certification by deleting the office employees from the certified bargaining unit. Extensive submissions were made to the LRB from not only the parties concerned, but other interested groups as well. The submissions addressed the LRB's jurisdiction to exclude a group of employees from an existing bargaining unit and the appropriate principles and policies to be applied.

While an application of this nature does not fall within the scope of Section 52(2), the panel found that it did have jurisdiction under Section 36 to vary a certification to exclude a group of employees from a bargaining unit. Because such an application requests a change to the scope of an existing unit previously found appropriate for collective bargaining, it is appropriate to require the applicant to establish that changed circumstances justify an alteration to the bargaining structure. In other words, in order to succeed, the applicant employees must show that it is no longer appropriate for them to be included in the unit. The panel emphasized that while the wishes of the applicant employees are one factor to consider, their wishes are not the determinative factor. The panel noted that previous LRB decisions on these type of applications focused on the wishes of the applicant employees. In departing from this approach, the panel observed:

> The Board's decisions to date on such applications have not generally followed a policy of respect for the existing bargaining unit structure. Instead, the Board has focused on whether an appropriate

> bargaining unit would result if the application is granted, or on how the group of employees, who now seek to be excluded, came to be included in the unit. Such an approach does not recognize that what is under consideration is a unit which the Board has earlier determined to be appropriate for collective bargaining. We are satisfied that the approach reflected in those decisions is not consistent with the law and policy of the Labour Code respecting the reconsideration of the appropriateness of bargaining units under Section 36 of the Code.
>
> ...an application which seeks to exclude a group of employees from a bargaining unit will have to show that it is no longer appropriate for them to be included in that unit. For example, experience may demonstrate that the employees' interests cannot be adequately represented as part of the existing unit. Other conditions, such as geographic location or the structure of bargaining units in the particular industry, may have changed giving rise to different conclusions with respect to the factors of administrative efficiency and convenience in bargaining and the community of interest amongst the employees in respect of their inclusion in the bargaining unit.
>
> Industrial stability has been and will continue to be a critical factor in such determinations. However, with the changes to the picketing provisions in the Labour Code enacted in 1984, concerns about this aspect of this factor may not arise in as many circumstances as they have in the past.
>
> It follows from the fact that the issue in applications of this nature is one of the continuing appropriateness of a bargaining unit that a vote will not be conducted as a matter of course. It would not be consistent in principle for the Board to conclude that it was no longer appropriate to include a group of employees in an existing bargaining unit, and then to order a vote thereafter. See by way of analogy, the Board's decisions in Section 36 consolidation cases. However, employees' wishes are a factor in the determination of the appropriateness of a bargaining unit, and the Board may, in limited circumstances, have recourse to a vote in cases where there is some uncertainty as to what those wishes are.

In rejecting the application before it, the panel made it clear that its decision did not foreclose a further application by the certain employees addressing the issue of changed circumstances and appropriateness of the bargaining unit.

This decision was upheld on reconsideration by the Council in decision No. C102/87. See also White Spot Limited (Ernie's Fine Foods Unit No 558) - and - Food and Service Workers of Canada - and - Certain Employees of White Spot Limited, No. C133/87, in which a panel of the Council applied Westar Timber Ltd, supra to reject an argument that bargaining units created through the gradual accretion of geographic locations should be decertifiable on the same basis where the majority of employees in a location subsequently desired exclusion from the unit.

VI CASELOAD

With the proclamation of the Industrial Relations Reform Act, 1987 on July 27, 1987, the name of the Labour Relations Board was changed to the Industrial Relations Council. Moreover, the Council assumed responsibility for the provision of mediation services formerly offered by the Ministry of Labour. In describing the tribunal's caseload during 1987, the Disputes Resolution Division will be examined separately from the Adjudication Division, which essentially continues the functions of the Labour Relations Board. Reference will be made to the Council but statistics will reflect the caseload for the mediation or adjudication services for the entire 1987 calendar year. The same approach is adopted in the Appendix of Statistical Tables. The statistical assumptions upon which caseload data are based are described on page 54 as a preface to the Appendix of Statistical Tables.

ADJUDICATION DIVISION

A. 1986-87 Comparisons

In 1987, the Council received a total of 3519 applications, a decrease of thirty-five per cent over the intake of 5376 cases in 1986. The Council disposed of 4213 applications (including some carried over from 1986), a decrease of twenty-one per cent from the 5312 cases disposed of in 1986. This decrease in workload may be attributed to the extraordinary number of strike vote observer appointments in 1986 which inflated the caseload intake for that year, as well as the boycott of the Council by some trade unions in the autumn of 1987.

Applications Filed

In 1987, applications filed with the Council increased from 1986 in four of the twenty categories illustrated in Table 1:

applications to vary an accreditation (248%), to cancel an accreditation (100%), to vary a certification (44%) and for reconsideration of a decision (5%).

Applications filed with the Council decreased from 1986, in 15 categories illustrated in Table 1:

applications for accreditation (100%), for the appointment of a strike or lockout observer (82%), regarding alleged illegal strikes, lockouts or picketing (74%), for a common employer declaration (54%), to alter the terms and/or conditions of employment (50%), for the appointment of an officer to settle a grievance (46%), to review an arbitration award (42%), to cancel a voluntary collective bargaining relationship (32%),

classified as miscellaneous (31%), for a successor status declaration (26%), alleging unfair labour practices (23%), for certification (18%), for an interpretation of the legislation as it applies to the collective bargaining relationship (16%), for the appointment of an arbitrator (14%) and to cancel a certification (4%).

One category remained unchanged:

applications for first contract arbitration.

Applications Disposed Of

In 1987, applications disposed of by the Council increased from 1986 in eight of the twenty categories illustrated in Table 1:

applications to vary an accreditation (237%), for a common employer declaration (52%), to vary a certification (42%), to cancel a certification (41%), for a successor status declaration (29%), to cancel a voluntary collective bargaining relationship (20%), for reconsideration of a decision (17%), and to review an arbitration award (7%).

Applications disposed of by the Council decreased from 1986 in ten of the twenty categories shown in Table 1:

applications for accreditation (100%), for the appointment of a strike or lockout vote observer (82%), regarding alleged illegal strikes, lockouts and picketing (70%), to alter the terms and/or conditions of employment (50%), classified as miscellaneous (23%), for the appointment of an officer to settle a grievance (16%), for the appointment of an arbitrator (14%), for certification (11%), for an interpretation of the legislation as it pertains to the collective bargaining relationship (3%), and alleging unfair labour practices (1%).

Two categories remained unchanged:

applications to cancel an accreditation and applications for first contract arbitration.

B. CASES DEALT WITH IN 1987

Certification of Bargaining Agents

A significant aspect of the Council's workload involved applications for certifications under Section 39 of the Act, which contemplates three different kinds of applications for certification. Under Section 39(1), a trade union may seek certification for a group

of previously unorganized employees, i.e. those not subject to an existing certification or collective agreement. Section 39(2) provides that a trade union may apply to be certified for a group of employees already represented by another union. These applications are commonly known as "raids". And Section 39(5) makes special provision for a joint application for certification by a number of unions.

The Council received 319 certification applications in 1987, a decrease of 72 from the 391 applications received in 1986. The Council disposed of 343 certification applications in 1987, representing a decrease of 42 from the 385 applications processed in 1986. Of the 343 applications processed in 1987, 81 were withdrawn (for a variety of reasons), leaving 262 to be formally decided by the Council. Of these 262 applications, 223 involved previously unorganized employee groups. The remaining 39 applications involved employees then represented by a trade union.

Of the 223 applications under Section 39(1) involving previously unorganized employees, a total of 58 were dismissed. A total of 14 applications were found to be beyond the Council's jurisdiction, either on constitutional grounds or based on the definition of "unit". In another two cases, applications were rejected in circumstances where an existing certification was varied to include the employees for whom the application was made. Accordingly, of those cases within the Council's jurisdiction, 42 certification applications (20%) were denied in situations where the result was to leave the employees without any union representation.

The Council disposed of another 39 certification applications in respect of employees already represented by another union. This number represented about 15% of the total certification decisions in 1987. Twenty-five applications were contested and involved entire bargaining units. The remaining 14 applications were made in attempts to fragment, or enlarge, existing units. Of the 39 applications, 34 were made during the term of an existing collective agreement. The applicant union was successful in obtaining certification in 19 of the 39 cases. The incumbent union retained its certification in another 19 cases. In once case, certification was granted to a second applicant for the same unit.

Three applications pursuant to Section 39(5) of the Act (joint applications for certification by a number of trade unions), were filed with the Council in 1987.

As well, four construction project certifications were issued by the Council pursuant to Section 45(1).

In 1987, applications under Section 39(1) regarding previously unorganized employees involved 5060 employees, of whom 3582 obtained union representation. By contrast, inter-union contests under Section 39(2) involved 2905 employees, with a resulting

change in union representation for 385 of these employees. A review of Council files indicates that of the total 25 cases and 2905 employees, three inter-union rivalries resulted in more than one application and affected 572 employees (20%).

Inter-union contests between the International Association of Bridge, Structural and Ornamental Iron Workers and the Canadian Iron, Steel and Industrial Workers Union produced eight applications involving 67 employees; between the General Workers Union of B.C. and the Construction and General Workers' Union, three applications involving 430 employees; between the Hotel and Restaurant Employees' and Bartenders' Union and the Canadian Hotel and Allied Workers, two applications involving 75 employees.

In 1987, the number of employees receiving certification was 4115, a decrease from the 4839 employees receiving certification in 1986. The number of employees involved in a contested change of union representation decreased from 1177 in 1986 to 385 in 1987.

Unfair Labour Practices and Remedies

Sections 2, 3, 4, 5, 5.1, 6, and 7 of the Act contain various provisions relating to unfair labour practices. In 1987, the Council received 275 complaints of violations of these several provisions of the statute, a decrease from the 355 received in 1986. The Council disposed of 340 complaints: 223 were settled without adjudication, usually through the assistance of an investigating officer. Of the remaining 117 complaints formally adjudicated by the Council, 90 were rejected and 27 resulted in remedial orders. Hearings were held for 109 applications and 82 of the 117 decisions were accompanied by published reasons.

Allegations of Employer Violations

A large number of unfair labour practice complaints allege employer activity designed to discourage employees from organizing. Of the 340 unfair labour practice cases disposed of by the Council in 1987, 162 alleged such violations pursuant to Sections 2 and 3 of the Act. Of these 162 complaints, 77 alleged dismissals contrary to the Act, while another 85 complained of employer tactics short of actual discharge. Of these 85 complaints, 73 involved allegations of improper attempts to induce or compel abstention from union membership and 12 were based on alleged interference with trade union administration.

A significant unfair labour practice complaint is that concerning discharge for union involvement, alleged in 77 of the 340 complaints. All of these 77 complaints were brought by trade unions. Settlements were reached with the assistance of an officer in 55 cases. Twenty-two discharge cases required adjudication.

Thirty-six of the 77 dismissal complaints were withdrawn by the unions involved and records do not indicate the fate of the dismissed employees. Of the remaining 41 dismissal complaints, including settlements and decisions, 30 culminated in some form of positive relief for at least some of the employees affected.

The Council's power under Section 8(4)(c) to order reinstatement and/or back pay was the basis of six decisions involving 28 employees. Twenty-seven of these employees were reinstated with back pay. One received a cash settlement. In another four cases, involving four employees, consent orders were issued whereby two employees were reinstated with back pay and two employees received severance pay.

Seventeen complaints requested certification under Section 8(4)(e) in conjunction with a complaint under Section 3. None of the requests were granted. We note that in four of the cases, the union did secure certification under Section 43.

Organizing on Employer Premises

Two complaints were filed alleging that trade unions had been organizing on the employers' properties during working hours. One of these complaints was filed by a rival union; the other complaint was filed by an employer. Both cases were settled. A third complaint filed by a trade union alleged that an employee was attempting to influence other employees to decertify during working hours. This complaint was dismissed.

Coercion and Intimidation

Section 4(3) prohibits any coercive or intimidatory actions by a union in order to influence a person in deciding whether to be or cease being a union member. In 1987, the Council disposed of 17 applications alleging violations of this section. Eleven cases were settled and six applications were dismissed.

Fair and Reasonable Conditions of Membership

The Council dealt with 18 applications under Section 5 of the Act, 17 filed by employees and one filed by an employer. Eight cases were settled and eight applications were dismissed. In one case, the Council found that a violation had occurred, and in another case, a consent order was issued to resolve the dispute.

Discriminatory Practices Restricted

Section 5.1 is a new statutory provision introduced on July 17, 1987, which restricts a trade union's ability to require an employer to terminate an employee's employment, or otherwise to discriminate against an employee in regard to employment or a condition thereof, due to lack of trade union membership. No complaints under this Section were filed with the Council in 1987.

Duty to Bargain in Good Faith

There were 59 complaints disposed of alleging a refusal to bargain in good faith as required by Section 6 of the Act. Forty-eight were filed by unions and 11 by employers.

Of the 59 charges of failure to bargain in good faith, 48 were voluntarily resolved. Eight of these complaints were rejected. In two cases, a violation was deemed to have occurred and in one case, a consent order was issued to resolve the dispute.

Duty of Representation

In 1987, the Council disposed of 81 complaints by individual employees alleging a violation by their bargaining agent of the duty of representation described in Section 7. Thirty-two of these complaints were voluntarily resolved through the efforts of an officer. Forty-three complaints were rejected. In three cases, consent orders were issued to resolve the disputes. In another two cases, violations were found and the unions were ordered to take the grievance to arbitration. In one case, a violation was found and the Council decided that it would hear the merits of the grievance.

Religious Exemptions

Twelve applications were disposed of by the Council seeking exemption for employees from the union security and dues provisions of collective agreements because of their religious convictions or beliefs. Nine of the applications were granted, two were withdrawn, and one was dismissed.

Votes

Representation Votes

The Council may direct that representation votes be held in a variety of circumstances under the Act. A total of 356 representation votes were directed by the Council regarding applications disposed of in 1987. In all applications for certification except

"alternate construction certifications" under Section 45, a representation vote is required. A representation vote will be held pursuant to Section 52(2) of the Act where the Council receives a decertification application signed by at least 45% of the employees in the bargaining unit. Under Section 53(2), the Council may order a representation vote to determine which trade union will be the bargaining agent for a unit created as a result of a successorship. The Council may order that a representation vote be conducted before declaring that one trade union has acquired the rights of another trade union due to a merger, amalgamation, or transfer of jurisdiction (See Section 54(2)). Section 40 of the Act requires the Council to conduct a representation vote before issuing a multi-employer certification. Representation votes are used to determine consent to trade union representation by dependent contractors (Section 48(1)) and by professional employees (Section 152(2)). Finally, representation votes are used to determine whether a proposed council of trade unions is representative of the employees in the proposed bargaining unit (Section 57).

A total of 228 votes were held involving 230 applications for certification. Two hundred and thirteen votes involved applications for certification under Section 39(1) of the Act. Of these 213 votes, 211 involved only one application. One vote involved two certification applications for the same unit. Another vote involved both a certification application and an application to vary a certification. A total of 4945 voters were eligible to participate in the 213 votes under Section 39(1). The union was successful in 81% of the cases, i.e. 174 out of the 214 applications. Fifteen votes involved applications for certification under Section 39(2) of the Act. Fourteen votes involved only one applicant union. One vote involved two applicant unions. A total of 1113 voters were eligible to participate in the 15 votes. The applicant union was successful in 50% of the cases, i.e. eight out of the 16 applications.

Seventeen applications to vary a certification required a vote. Sixteen of these sought to expand a presently certified bargaining unit, and the union was successful in 15 of these 16 applications. One application requested the deletion of a portion of a bargaining unit, and this request was granted as a result of the vote.

Ninety-two votes involved decertification applications made under Section 52(2) of the Act. In 82 cases, the union was decertified. The total number of employees eligible to vote for or against decertification, was 1148.

Fourteen votes were held to cancel a voluntary collective bargaining relationship. In 13 of the 14 cases, the employees voted to cancel the relationship. Sixty-six employees were eligible to participate in the 14 votes.

Two votes involved successorship applications. One vote resulted from an agreement to resolve an unfair labour practice allegation and one vote resulted from the merging of two bargaining units. Two votes resulted from appeals of certification decisions.

"Offer Last Received" Votes

Section 137.7 is a new statutory provision introduced on July 27, 1987. Section 137.7(4) provides that before the commencement of a strike or lockout, the employer may request the commissioner to direct a vote of the employees in the affected bargaining unit regarding acceptance or rejection of the employer's offer last received by the trade union. Under Section 137.7(5), a trade union may request the commissioner to direct that a vote be taken of employers in an employers' organization as to the acceptance or rejection of the trade union's offer last received by the employers' organization. Moreover, during a strike or lockout the commissioner may, on his own motion pursuant to Section 137.7(9) or (10), direct that a "final offer vote" be held if he considers it in the public interest to do so. Section 137.7(6) provides that where a vote favours the acceptance of a "final offer", an agreement is thereby constituted between the parties.

In 1987, nine applications under Section 137.7(4) were filed with the Council. Seven of these applications were granted, one was dismissed, and one was withdrawn. In five cases, the vote favoured acceptance of the employer's offer and an agreement was constituted between the parties. No applications were filed under Section 137.7(5), nor did the commissioner direct any votes pursuant to Section 137.7(9) or (10) of the Act.

First Contract Arbitration

After a trade union has been certified as bargaining agent for a group of employees, it will commence bargaining with the employer to conclude a first collective agreement. If the parties are unable to reach their first collective agreement, Section 137.5 of the Act provides that upon the request of a party, the commissioner may constitute a panel of the Council to inquire into the dispute and if he considers it advisable, to settle the terms and conditions of the agreement. Section 137.5 was introduced on July 27, 1987, and replaces Section 70 which provided that such a dispute would be referred to the tribunal from the Minister of Labour.

No applications for first contract arbitration were received by the Council in 1987.

Failure to Execute or Comply with a Collective Agreement

In 1987, the Council disposed of 48 applications alleging violation of Section 65(1) or (2) of the Act, 38 of which were settled and four of which were dismissed. In six cases, orders were issued.

Delay or Unrest in Settling a Difference

In 1987, the Council received 14 applications under Section 97 alleging undue delay in resolving a difference arising during the term of a collective agreement. Fourteen applications were dealt with, all being settled.

Alteration of Employment Terms and Conditions

Section 51 of the Act requires the Council's consent to changes in working conditions while a certification application is pending. Section 61 imposes the same requirement for four months following certification or until a collective agreement is executed, whichever occurs first. In 1987 the Council received two applications, and disposed of two applications seeking permission to alter terms and conditions of employment. One application was granted and one was withdrawn.

In 1987, the Council disposed of 37 applications alleging violation of Section 51 or 61 of the Act. Thirty of the cases disposed of were settled, three were dismissed and in four cases, orders were issued.

Questions Arising Under the Act

Section 34 of the Act describes the Council's exclusive jurisdiction to decide any question arising under the Act, including whether certain individuals are "employees" and thus appropriately included in a bargaining unit. In 1987, a total of 172 applications were filed with the Council under Section 34, with 66 relating to cancellation of a voluntary collective bargaining relationship. In 1987, a total of 241 applications were disposed of by the Council under Section 34, with 95 of these applications involving the question of whether individuals were "employees" under the Act. Of the remaining 146 applications under Section 34, 98 were applications to cancel a voluntary collective bargaining relationship.

Declaratory Opinion

The Council received 19 applications in 1987 requesting that it render a declaratory opinion (other than applications pertaining to Part 5 of the Act). The Council disposed of 15 applications. In two cases, an opinion was issued. Nine applications were rejected and four applications were withdrawn.

Variance of Certification

In 1987, the Council received a total of 465 applications for certification variance, an increase of 44% from 1986. As in previous years, most of the applications involved a

simple change in the name or address of the employer or the trade union. The Council disposed of 541 applications for certification variance, granting 473 of the applications. Twenty-one of the applications to vary a certification sought to expand a bargaining unit. Seventeen of these were granted, adding 198 employees and five dependent contractors to existing certifications. Votes were conducted to determine 16 of these applications.

Declaration of Successor Employer

Section 53 provides for the automatic transfer of union certification and the collective agreement when a business is disposed of, for example, by sale or lease. In 1987, the Council received 133 applications for a declaration of successor employer status. The Council disposed of 214 such applications in 1987, granting 135, while 61 were withdrawn and 18 were rejected.

Declaration of Successor Trade Union

In 1987, the Council received 56 applications for declaration under Section 54 of the Act, on the bargaining rights of successor trade unions resulting from a union merger, amalgamation, or a transfer of jurisdiction. The Council disposed of 57 such applications, granting 56. One was withdrawn.

Declaration of Common Employer

In 1987, the Council received 54 applications for declarations under Section 37 of the Act to treat two or more enterprises as one employer. A total of 111 applications under Section 37 were disposed of, 71 of them involving enterprises in the construction industry. Eighty applications were settled or withdrawn. Of the remaining 31, the Council granted 15 declarations with respect to at least some of the enterprises named in the application. The balance were rejected.

Essential Services Designation

The Council dealt with 32 applications requesting essential service designations, issuing 30 orders while two designation disputes were settled.

Resolving Grievances under a Collective Agreement

Section 96 of the Act provides the Council with a comprehensive original jurisdiction in resolving grievances arising under the provisions of a collective agreement. In 1987, the Council received 299 applications under Section 96 requesting the assistance of an officer to settle a difference arising during the term of a collective agreement. A

total of 497 applications under Section 96 were disposed of by the Council, with 337 being voluntarily settled, almost all through the efforts of an officer. This represents a settlement rate of 68%. This very substantial rate of officer settlement is of major benefit to the labour relations community, for the parties reach a voluntary resolution of their differences and a potentially serious overloading of the arbitration procedure is thereby avoided. If the officer appointed by the Council does not achieve a resolution of the arbitrable difference, the Council may either refer the matter back to the parties, or inquire into the difference itself and make an order to finally resolve it. Of the 497 applications disposed of in 1987 under Section 96, 160 were not settled through officer mediation. Two of these applications were withdrawn prior to involvement of an officer, one was determined to be non-arbitrable and 111 were referred back to the parties. The remaining 46 were adjudicated by the Council, 38 of which turned on issues which could be disposed of on the basis of the officer's report and written submissions from the parties.

Review of Arbitration Awards

Section 108 of the Act gives the Council authority to review arbitration awards delivered under collective agreements. In 1987, the Council received 35 applications and disposed of 60 applications under Section 108. Of the 60 applications disposed of, 27 were brought by employers, 24 by unions, and nine by the grievors involved. Sixteen dealt with arbitration awards regarding discharge grievances.

Section 108 affords only a limited review of an arbitration award rather than an extensive scope of appeal. This policy of limited interference in grievance arbitration is reflected in the fact that of the 60 applications disposed of under Section 108, in only 13 cases were the arbitrators' decisions set aside. In nine cases, the awards were referred back to the arbitrators. In two cases, the parties were directed to set up new arbitration boards to hear the grievances afresh. In one case, the Council substituted another award. In another case, the panel requested submissions regarding an appropriate remedy. Twelve applications under Section 108 were withdrawn, and 35 were dismissed. Of the 48 applications adjudicated by the Council, none were dealt with in a formal hearing, but 46 were accompanied by reasons for decision issued to the labour relations community at large.

Accredited Employers' Organizations

No applications were received in 1987 for accreditation of employer organizations as bargaining agents of employers. There were 181 applications made to vary an accreditation and 175 applications were disposed of: 109 were granted, 20 were dismissed and 46 were withdrawn. (See Table 1 and footnotes thereto in the Statistical

Appendix). The Council received four applications in 1987 to cancel an accreditation: two were disposed of by the Council which granted both applications.

Strikes, Lockouts and Picketing

A total of 84 applications relating to strikes, lockouts and picketing were received by the Council in 1987. Ninety-six cases were disposed of: 50 applications alleged illegal strike action, eight alleged illegal lockouts and 38 concerned picketing activity.

Of the 96 cases disposed of by the Council in 1987, 66 cases were settled without formal adjudication. These included 35 of the 50 strike cases, all eight lockout cases and 23 of the 38 picketing cases.

Of the 30 cases which required formal adjudication, 25 resulted in orders or opinions, and five were dismissed. Fifteen of the cases requiring adjudication involved allegations of illegal strikes and 15 involved allegations of illegal picketing activity.

Strikes and Lockouts

A fundamental principle of the Act is that the legality of a strike or lockout depends upon its timing. Section 93 requires that all disputes arising under a collective agreement are to be resolved, without work stoppage, by arbitration or another method agreed to by the parties. Sections 79 and 79.1 also contemplate that strikes and lockouts are prohibited during the term or operation of a collective agreement. Moreover, Sections 80 through 83 of the Act stipulate certain preconditions to the legality of a strike or lockout.

In 1987, the Council disposed of 50 applications alleging illegal strike action. Of the 15 cases which required adjudication, eight alleged threatened or actual illegal job action during the term of a collective agreement. In two cases, a ruling was required as to whether or not a collective agreement was in effect. In six of the eight cases, the Council ruled that violation of the Act had occurred, or would occur. Another six of the adjudicated strike applications alleged a violation of statutory preconditions to legal job action: a violation was found to have occurred in five cases, while one case was dismissed. Finally, one application of the fifteen cases requiring adjudication, requested relief under Section 90, which was granted by the Council.

The Council disposed of eight complaints during 1987 alleging illegal lockouts, none of which required adjudication.

Picketing

Sections 85 through 88 of the Act delineate the scope of legal picketing activities by trade unions. In the 1987 report year, 38 applications relating to picketing were disposed of by the Council, 27 filed by employers and 11 by unions. See Table 7 in the Statistical Appendix for an illustration of the nature and disposition of these cases.

Termination of Bargaining Rights

Section 52 of the Act deals with the cancellation of trade union certifications. In 1987, 221 such applications were filed with the Council. The Council disposed of 288 such applications in 1987. Of the applications disposed of, 118 were filed by groups of employees, 166 were filed by employers, and four were filed by trade unions. The Council granted 210 of these applications, 54 were rejected, and 24 were withdrawn. See Table 3 in the Statistical Appendix.

Reconsiderations

In 1987, the Council received 192 applications under Section 36 of the Act, requesting reconsideration of Council decisions. Of the 204 applications disposed of during 1987, 53 were withdrawn, 125 were dismissed, and 26 resulted in a change in the original decision. For an illustration of the "success" rate of reconsideration applications, see Table 6 in the Statistical Appendix.

DISPUTES RESOLUTION DIVISION

Section 137.2 in Part 8.1 of the Act specifies the duties of the Disputes Resolution Division:

> (a) to monitor collective bargaining between employers and bargaining agents;
>
> (b) to provide assistance to employers and bargaining agents to facilitate the making or renewing of collective agreements;
>
> (c) to gather and publish information and statistics respecting labour relations, employment and collective bargaining in the Province;

(d) to administer mediation services provided under this Part, and

(e) to carry out the functions imposed on it by this Part and other functions the Council considers necessary to effect the purposes of this Part.

The chairman of the Disputes Resolution Division ensures the fulfillment of these duties, assisted by a vice chairman and five mediation officers. As of December 31, 1987, Jack Chapelas, Don Cott, Fred Long, Jim Toogood and Malcolm Wilkinson served as mediation officers. When the Minister directs the Council to designate essential services (see Section 137.8 of the Act), the commissioner may refer the matter to a vice chairman in this Division to deal with. The provision of mediation services is described in Sections 137.3 and 137.7 of the Act. Mediation officers are also available on an informal basis. The clients are trade unions, employers, and employers' organizations located throughout British Columbia. The individual mediation officers develop their mediation techniques from contact with other mediators combined with their own individual approach. The Division maintains contact with a variety of conciliation and mediation services in Canada and the United States to exchange information on administration, legislation, trends and problems of mutual concern. The Division makes available speakers, panelists and moderators to educational institutions as well as trade union and employer organizations.

The Division administers the Preventive Mediation Program. This program utilizes the services and expertise of mediation officers to assist labour and management in identifying and resolving existing or potential problems which affect the collective bargaining relationship. It is founded on the premise that effective labour/management relations benefit the public as well as the parties. The five parts of the program are:

- *relationship by objectives*
- *joint training*
- *grievance mediation*
- *labour-management committees*
- *first agreement orientation*

Relationship by objectives is an in-depth, conflict resolution process that brings the parties together to analyze problems of mutual concern, to establish common objectives, and to decide on ways and means to implement those objectives. *Joint training* is a joint union-management labour relations training course for shop stewards and management supervisors. The training is intended to enhance the ability of supervisors and stewards to jointly deal with minor problems before they become major issues; to encourage supervisors and stewards to recognize and respect each other's roles,

responsibilities and rights; to emphasize joint problem-solving and the mutuality of interests. *Grievance mediation* is a quick, inexpensive and voluntary way to resolve grievances. Representatives of labour and management meet with a mediation officer to attempt resolution of a grievance prior to arbitration. It is an informal process that has proven useful not only in resolving grievances but in identifying and resolving situations that produce grievances. In 1987, mediation officers in this program participated in 100 grievance mediations, only one of which was not resolved in the process. *Labour-management committees* provide an effective forum for emphasizing two-way communications on problems that affect relations between labour and management. These committees may focus on issues that would normally arise in piecemeal fashion or which would otherwise need to be addressed through more formal mechanisms. Concerns such as working conditions, operational problems, job assignments, work scheduling and economic conditions affecting the enterprise can be effectively dealt with by labour-management committees. The Division provides assistance on how to establish and maintain such committees, including monitoring or chairing new committees. *First agreement orientation* is a Division service that provides information to employers and trade unions who are negotiating or are about to negotiate a collective agreement for the first time. The objective is to remove the mystique surrounding collective bargaining by providing practical information on the legislative guidelines and thereby enabling negotiations to proceed more smoothly. It is not intended to teach labour relations techniques.

For an analysis of mediation officer appointments and outcome of appointments in 1987, refer to Tables 8 and 9 in the Statistical Appendix.

VII APPENDIX OF STATISTICAL TABLES

The following tables provide an analysis of the applications filed with and disposed of in 1986 and 1987.

In a few cases, multiple decisions resulted from one application. These were usually counted as single decisions. However, for two types of applications, where the volume of multiple decisions was higher, different methods were used. Rulings regarding the status of employees under Section 34 were counted individually -- that is, one application requesting ten rulings was counted as ten decisions, while a withdrawal of such an application was counted as one. Applications to vary accreditations requested varying numbers and types of decisions. Each application was counted as one decision but a footnote indicates the number of employers who were affected by these applications.

An application involving a dispute is classified as withdrawn if the request for withdrawal comes prior to the involvement of an officer or a panel. An application withdrawn following such involvement is classified as settled.

It is important to note when using these figures as a guide that the work content of individual applications varies widely, both among different categories of applications and among applications in the same category. The work content of the administrative, investigative and decision-making functions can vary widely as well, from category to category and from application to application.

TABLE 1

APPLICATIONS AND COMPLAINTS FILED AND DISPOSED OF 1986 - 1987

The category "Order Issued" includes all rulings that a violation occurred or that a specific activity should be restricted. Formal orders were not necessarily issued.

The category "Rejected" includes decisions where no violation is deemed to have occurred as well as decisions where it is determined no further action is warranted.

For further elaboration of the figures in the table, refer to Chapter VI and the previous page.

TYPE OF APPLICATION	APPLICATIONS AND COMPLAINTS FILED		APPLICATIONS AND COMPLAINTS DISPOSED OF	
	1986	1987	1986	1987
Certification Applications				
Granted			206*3	184*4
Rejected			80	78
Withdrawn			99	81
Sub-Total	391*1	319*2	385	343
Certification Variances				
Granted			332	473
Rejected			18	46
Withdrawn			31	22
Sub-Total	324	465	381	541
Certification Cancellations				
Granted			152	210
Rejected			23	54
Withdrawn			29	24
Sub-Total	230	221	204	288

cont.

TABLE 1 (cont.)

APPLICATIONS AND COMPLAINTS
FILED AND DISPOSED OF
1986 - 1987

TYPE OF APPLICATION	APPLICATIONS AND COMPLAINTS FILED		APPLICATIONS AND COMPLAINTS DISPOSED OF	
	1986	1987	1986	1987
Accreditation Applications				
Granted			0	0
Rejected			0	0
Withdrawn			1	0
Sub-Total	1	0	1	0
Accreditation Variances				
Granted			45	109
Rejected			3	20
Withdrawn			4	46
Sub-Total	52*5	181*6	52*7	175*8
Accreditation Cancellations				
Granted			2	2
Rejected			0	0
Withdrawn			0	0
Sub-Total	2	4	2	2
Declaration of Successor Status				
Granted			152	191
Rejected			13	18
Withdrawn			45	62
Sub-Total	255	189	210	271

cont.

TABLE 1 (cont.)

APPLICATIONS AND COMPLAINTS
FILED AND DISPOSED OF
1986 - 1987

TYPE OF APPLICATION	APPLICATIONS AND COMPLAINTS FILED		APPLICATIONS AND COMPLAINTS DISPOSED OF	
	1986	1987	1986	1987
Appointment of an Officer to Resolve a Dispute Where a Collective Agreement is in Effect				
Settled			401	337
Arbitrated			44	46
Referred Back to Parties			142	111
Not Arbitrable			2	1
Withdrawn			2	2
Sub-Total	558	299	591	497
Complaints of Unfair Labour Practices				
Settled			216	223
Order Issued			38	27
Rejected			89	90
Withdrawn			1	0
Sub-Total	355	275	344	340
To Alter Conditions of Employment				
Granted			2	1
Rejected			0	0
Withdrawn			2	1
Sub-Total	4	2	4	2

cont.

TABLE 1 (cont.)

APPLICATIONS AND COMPLAINTS
FILED AND DISPOSED OF
1986 - 1987

TYPE OF APPLICATION	APPLICATIONS AND COMPLAINTS FILED		APPLICATIONS AND COMPLAINTS DISPOSED OF	
	1986	1987	1986	1987
For an Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship				
Ruling Made			109	94
Withdrawn			38	49
Sub-Total	126	106	147	143
To Cancel a Voluntary Collective Bargaining Relationship				
Granted			68	75
Rejected			6	12
Withdrawn			8	11
Sub-Total	97	66	82	98
For an Inquiry to Settle the Terms and Conditions of a First Collective Agreement				
Settled			0	0
Contract Imposed			0	0
Rejected			0	0
Withdrawn			0	0
Sub-Total	0	0	0	0

cont.

TABLE 1 (cont.)

APPLICATIONS AND COMPLAINTS
FILED AND DISPOSED OF
1986 - 1987

TYPE OF APPLICATION	APPLICATIONS AND COMPLAINTS FILED		APPLICATIONS AND COMPLAINTS DISPOSED OF	
	1986	1987	1986	1987
For an Order or Opinion Pertaining to Alleged Illegal Strikes, Lockouts and/or Picketing				
Settled			204	66
Order or Opinion Issued			74	25
Rejected			37	5
Sub-Total	321	84	315	96
To Treat Several Entities as One Employer				
Granted			21	15
Rejected			7	16
Withdrawn			45	80
Sub-Total	117	54	73	111
For Review of an Arbitration Award				
Granted			6	13
Rejected			36	35
Withdrawn			14	12
Sub-Total	60	35	56	60
For the Appointment of an Observer of a Strike or Lockout Poll				
Appointment Made	1322	232	1322	232

cont.

TABLE 1 (cont.)

APPLICATIONS AND COMPLAINTS
FILED AND DISPOSED OF
1986 - 1987

TYPE OF APPLICATION	APPLICATIONS AND COMPLAINTS FILED		APPLICATIONS AND COMPLAINTS DISPOSED OF	
	1986	1987	1986	1987
For the Appointment of an Arbitrator				
Request Acknowledged	681	589	681	589
Miscellaneous *9				
Settled			102	100
Granted			11	16
Order or Opinion Issued			117	56
Rejected			37	31
Withdrawn			21	18
Sub-Total	298	206	288	221
For Reconsideration of a Decision				
Dismissed			124	125
Varied			13	12
Reversed			12	14
Withdrawn			25	53
Sub-Total	182	192	174	204
TOTAL	5376	3519	5312	4213

cont.

TABLE 1 (cont.)

APPLICATIONS AND COMPLAINTS
FILED AND DISPOSED OF
1986 - 1987

The estimate of employees per application is derived from the estimate on the union applications. Variances do occur between the time of application and the time of disposal of the application. In the case of applications filed, the estimate could include some multiple counting where more than one union applied to cover the same group of employees.

*1 9,634 employees were included in the 391 certification applications filed in 1986.

*2 10,608 employees were included in the 319 certification applications filed in 1987.

*3 4,839 employees were included in the 206 certifications granted in 1986.

*4 4,115 employees were included in the 184 certifications granted in 1987.

*5 To add 29 employers, to delete 47 employers and to vary the names and/or addresses of 152 employers and one association.

*6 To add 19 employers, to delete 173 employers and to vary the names and/or addresses of four employers and two associations.

*7 31 employers were added to accreditations, 39 were deleted and the names and/or addresses of 12 employers and one association were varied. Requests to delete three employers were denied. Requests to add two employers, to delete five employers and to vary the name of one employer were withdrawn.

*8 22 employers were added to accreditations, 104 were deleted and the names and/or addresses of 123 employers and two associations were varied. Requests to delete 19 employers and to vary the name of one employer were denied. Requests to add one employer, to delete 57 employers and to vary the names and/or addresses of 21 employers were withdrawn.

*9 Includes applications for religious exemption, for last offer votes, regarding alleged failure to execute or comply with a collective agreement, regarding a delay or unrest in settling a difference, alleging unlawful alteration of employment terms and conditions, for essential service designations, for declaratory opinions (other than applications for declaratory opinions pertaining to Part 5 of the Act) and various other applications dealt with by the Council.

TABLE 2

CERTIFICATION APPLICATIONS DECIDED IN 1987

APPLICATIONS	GRANTED	REJECTED	TOTAL
Unorganized Employees *	165	58	223*
Organized Employees	19	20	39
TOTAL	184	78	262

* Deleting the 16 applications for unorganized employees which were rejected because they did not come under the jurisdiction of the Council, because the employees involved were represented through another certification, because the bargaining unit was inappropriate or because the applicant did not meet the definition of a trade union, the percentage of successful applications to certify unorganized employees can be expressed as 165 out of 207 or 80%.

NUMBER OF EMPLOYEES	GRANTED	REJECTED	TOTAL
Unorganized Employees	3582	1478	5060
Organized Employees	533	2828	3361
TOTAL	4115	4306	8421

ATTEMPTS BY ANOTHER UNION TO REPLACE AN INCUMBENT UNION	SUCCESSFUL	UNSUCCESSFUL	TOTAL
Number of Attempts	8	17	25
Number of Employees Involved *	385	2520	2905

* The balance of the organized employees were involved in attempts to enlarge, or fragment, existing bargaining units.

TABLE 3

APPLICATIONS TO CANCEL CERTIFICATIONS DISPOSED OF IN 1986-1987

	NUMBER OF APPLICATIONS	
	1986	1987
Filed by the Employee(s)		
Granted	63	83
Rejected	14	29
Withdrawn	12	6
TOTAL	89	118
Filed by the Employer		
Granted	87	124
Rejected	9	25
Withdrawn	17	17
TOTAL	113	166
Filed by the Union		
Granted	2	3
Rejected	0	0
Withdrawn	0	1
TOTAL	2	4
Summary		
Granted	152	210
Rejected	23	54
Withdrawn	29	24
TOTAL	204	288

TABLE 4

CERTIFICATION APPLICATIONS RESULTING IN A VOTE IN 1987

A.	Number of applications resulting in a vote for or against one union or between two unions applying for the same unit	214 out of 237 or 90%
	Number of successful applications	174*
	Number of unsuccessful applications	40
	Percentage of successful applications	81%
	Total number of eligible voters involved in the 214 applications **	4945
B.	Number of applications resulting in a choice between an applicant and an incumbent union	16 out of 25 or 64%
	Number of successful applications	8
	Number of unsuccessful applications	8
	Percentage of successful applications	50%
	Total number of eligible voters involved in the 16 applications **	1113

* For two of the successful applications, an existing certification was varied to include the employees.

** This figure can vary from the number of employees originally applied for. In some cases, two or more applications resulted in one vote and thus one group of eligible voters.

TABLE 5

APPEALS DISPOSED OF IN 1987

Type of Application Being Reconsidered	Dismissed	Varied	Reversed	Withdrawn	Total
Certification	17	4	2	14	37
Appeal of a certification decision	3	0	0	0	3
Variance of certification	3	0	0	0	3
Cancellation of a certification	13	0	0	4	17
Appeal of cancellation of certification decision	0	0	0	1	1
Variance of accreditation	1	0	0	1	2
Appeal of a variance of accreditation decision	1	0	0	0	1
Declaration of successor status	8	0	0	4	12
Appeal of successor status decision	1	0	0	0	1
The disposition of a grievance under an existing collective agreement	5	0	1	2	8
Appeal of a disposition of a grievance under an existing collective agreement decision	1	0	0	0	1
Unfair labour practice adjudication	15	1	3	9	28

cont.

TABLE 5 (cont.)

APPEALS DISPOSED OF IN 1987

Type of Application Being Reconsidered	Dismissed	Varied	Reversed	Withdrawn	Total
Appeal of an unfair labour practice adjudication	2	0	0	0	2
Appeal of an appeal of an unfair labour practice adjudication	2	0	0	0	2
A ruling re: an interpretation of the legislation as it applies to the collective bargaining relationship	11	2	2	4	19
Appeal of a ruling re: an interpretation of the legislation as it applies to the collective bargaining relationship	1	3	0	0	4
Appeal of an appeal of a ruling re: an interpretation of the legislation as it applies to the collective bargaining relationship	1	0	0	0	1
A ruling re: cancelling a voluntary collective bargaining relationship	1	0	0	1	2
A ruling re: more than one corporate entity being considered as one employer	1	0	0	1	2

cont.

TABLE 5 (cont.)

APPEALS DISPOSED OF IN 1987

Type of Application Being Reconsidered	Dismissed	Varied	Reversed	Withdrawn	Total
Appeal of a ruling re: more than one corporate entity being considered as one employer	1	0	0	0	1
A ruling pertaining to alleged illegal strikes, lockouts and/or picketing	10	1	0	2	13
Appeal of a ruling pertaining to alleged illegal strikes, lockouts and/or picketing	1	0	0	0	1
A review of an arbitration award	11	0	2	2	15
A ruling re: collective agreement compliance	1	0	0	0	1
A ruling re: religious exemption	2	0	0	0	2
A ruling re: exclusive authority to bargain	3	0	0	0	3
Appeal of a ruling re: exclusive authority to bargain	1	0	0	0	1
A ruling re: a last offer vote	0	0	0	1	1
A ruling re: technological change	0	0	1	0	1
A ruling re: consent to sue for damages	0	0	1	0	1

cont.

TABLE 5 (cont.)

APPEALS DISPOSED OF IN 1987

Type of Application Being Reconsidered	Dismissed	Varied	Reversed	Withdrawn	Total
A declaratory opinion	4	0	0	5	9
A ruling re: essential service designations	1	0	0	0	1
A ruling re: procedure	3	1	2	2	8
TOTAL	125	12	14	53	204

Appellant(s)	Dismissed	Varied	Reversed	Withdrawn	Total
Employer(s)	42	5	7	19	73
Union(s)	63	7	6	28	104
Employee(s)	18	0	0	4	22
Employer and Union	1	0	1	0	2
Employer and Employees	1	0	0	1	2
Accredited Employer Organization	0	0	0	1	1
TOTAL	125	12	14	53	204

TABLE 6

"SUCCESS" RATE OF APPEALS

	1983	1984	1985	1986	1987
Total Applications Disposed of	189	211	154	174	204
Number of These Withdrawn	22	28	29	25	53
Number of Applications Processed to a Final Decision	167	183	125	149	151
Number of Applications Resulting in a Revision of the Original Decision	38	40	20	25	26
"Success" Rate of Appeals	23%	22%	16%	17%	17%

TABLE 7

APPLICATIONS FOR AN ORDER OR OPINION PERTAINING TO ALLEGED ILLEGAL STRIKES, LOCKOUTS AND/OR PICKETING DISPOSED OF IN 1987

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION *
A. Dispute settled			
1. re alleged illegal lockout	8	4	1
2. re alleged illegal strike	23	5	0
3. re alleged illegal strike and picketing	8	0	0
4. re picketing (employer complaint)	15	1	1
5. re picketing (trade union application for a declaratory opinion)	8	0	0
6. re activity affecting business, etc. (S.90)	4	3	0
Sub-Total	66	13	2**

** Regarding interim rulings.

cont.

TABLE 7 (cont.)

APPLICATIONS FOR AN ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS AND/OR PICKETING DISPOSED OF IN 1987

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION *
B. Dispute disposed of by an adjudication that:			
(a) a violation had occurred or would occur or that a specific activity should be restricted, or			
(b) that certain proposed picketing be allowed			
1. re alleged illegal strike - work stoppage	8	7	6
2. re alleged illegal strike and picketing - work stoppage	3	3	0
3. re picketing (employer complaint) - to restrict legal picketing	3	3	0
- other	7	7	2
4. re picketing (trade union application for a declaratory opinion) - alleged ally	3	3	1
5. re activity affecting business, etc. (S.90)	1	1	1
Sub-Total	25	24	10

cont.

TABLE 7 (cont.)

APPLICATIONS FOR AN ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS AND/OR PICKETING DISPOSED OF IN 1987

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION *
C. Dispute disposed of:			
(a) by an adjudication that no violation had occurred or would occur or that a specific activity should not be restricted, or			
(b) by a refusal to rule on the proceedings			
1. re alleged illegal strike			
- work stoppage	2	2	1
- refusal to perform certain duties	1	1	1
2. re picketing (employer complaint)	2	2	2
Sub-Total	5	5	4
TOTAL	96	42	16

* In 1983, the Labour Relations Board changed its procedures regarding published decisions. Letter decisions and formal decisions were consolidated into one series. Statistics from 1983 on reflect this consolidated series and cannot be compared with previous years where only formal decisions were considered.

Note: The applications in Table 7 include those filed to avert threatened strikes, lockouts and/or picketing (through a declaratory opinion, a jurisdictional decision, etc.) as well as those protesting some form of actual job action.

TABLE 8

ANALYSIS OF MEDIATION OFFICER APPOINTMENTS

Appointments continued from previous year	30
Appointments made - January 1 - December 31, 1987	132
TOTAL	162
Breakdown of Appointments	
On application of employers	64
On application of trade unions	67
Joint applications	
* At direction of the Minister or Commissioner	1
TOTAL	132
Coverage of Appointments	
Number of employers involved	228
Number of units affected	221
Number of employees involved	23,407
Disposition of Appointments	
Parties reached agreement	123
Parties did not reach agreement	31
Appointments continuing	7
Appointments rescinded	1
TOTAL	162
Additional Settlements	
Following report of the mediation officer	11
No official appointment	12
TOTAL	23

* S.69(2) of the Labour Code empowered the Minister, on his own motion, to appoint a mediation officer. On July 27, 1987, the Industrial Relations Reform Act, 1987 repealed S.69 of the Labour Code; S.137.7(3) of the Industrial Relations Act empowers the Commissioner to refer a matter to the Chairman of the Disputes Resolution Division for appointment of a mediation officer.

TABLE 9

DISPUTES COMPLETED BY MEDIATION OFFICERS IN 1987

Appointments	162
Less rescinded appointments	1
Less continuing	7
TOTAL	154
Plus no appointment	12
TOTAL DISPUTES COMPLETED	166
Disputes settled during mediation officer's term	123
Disputes settled after mediation officer's term	11
Disputes settled no official appointment	12
TOTAL SETTLED	146
Disputes reported not settled	31
Less settled following report	11
TOTAL NOT SETTLED	20
SUCCESS RATE OF SETTLEMENTS	86.30%

TABLE A

STATUTORY HISTORY OF THE INDUSTRIAL RELATIONS ACT

(1) THE LABOUR CODE

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Labour Code, R.S.B.C. 1979, c.212 (formerly Labour Code of British Columbia, S.B.C. 1973, (2nd Sess.), c.122)	November 13, 1973 Proclamation	12, 26, 124, 139, 140, 150	Reg. 424/74, Pt. II, V. 16, p.645
	December 20, 1973 Proclamation	21, 55	Reg. 12/74, Pt. II, V. 17, p.158
	January 14, 1974 Proclamation	1-11, 13-20, 22-25, 27-30, 32-54, 56, 59-69, 73, 92-112, 122, 123, 125-127, 138, 141-149, 150A, 151(a), 152	Reg. 41/74, Pt. II, V. 17, p.192
	January 24, 1974 Proclamation	70-72	Reg. 53/74, Pt. II, V. 17, p.195
	March 1, 1974 Proclamation	74-78	Reg. 154/74, Pt. II, V. 17, p.407
	March 14, 1974 Proclamation	113-121A	Reg. 174/74, Pt. II, V. 17, p.433
	August 15, 1974 Proclamation	57, 58	Reg. 578/74, Pt. II, V. 17, p.949
	September 2, 1974 Proclamation	31, 79-91	Reg. 606/74, Pt. II, V. 17, p.998
	September 16, 1974 Proclamation	151(b) and (c)	Reg. 682/74, Pt. II, V. 17, p.1116

TABLE A (cont.)

STATUTORY HISTORY OF THE INDUSTRIAL RELATIONS ACT

(2) AMENDING ACTS

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Statute Law Amendment Act, 1974, S.B.C. 1974, c.87, s.22	October 14, 1974 Proclamation	22(a) (among others)	Reg. 709/74, Pt. II, V. 17, p.1158
	June 20, 1974 Royal Assent	22(b) - 22(i) (among others)	N/A
Essential Services Continuation Act, S.B.C. 1974, c.108, s.6	August 9, 1974 Royal Assent	6 (among others)	N/A
Elevator Construction Industry Labour Disputes Act, S.B.C. 1974, c.107, s.6	November 26, 1974 Royal Assent	6 (among others)	N/A
Labour Code of British Columbia Amendment Act, 1975, S.B.C. 1975, c.33	June 26, 1975 Royal Assent	1-6, 8-33	N/A
	January 14, 1974 Retroactive Effect	7	N/A
Labour Code of British Columbia Amendment Act, 1976, S.B.C. 1976, c.26	June 30, 1976 Royal Assent	1-8	N/A
Miscellaneous Statutes Amendment Act, 1976, S.B.C. 1976, c.32	July 8, 1976 Proclamation	12A	Reg. 391/76, Pt. II, V. 19, p.511
Labour Code of British Columbia Amendment Act, 1977, S.B.C. 1977, c.72	September 27, 1977 Royal Assent	1-12	N/A
Ministerial Titles Amendment Act, S.B.C. 1977, c.75	October 21, 1977 Proclamation	Sch. I, Ss.8(2), 127(3), 129(a), 136, 137(1)(a)	N/A

TABLE A (cont.)

STATUTORY HISTORY OF THE INDUSTRIAL RELATIONS ACT

(2) AMENDING ACTS (cont.)

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Essential Services Disputes Act, S.B.C. 1977, c.83	October 28, 1977 Proclamation	19 repeals 73(1) to (6)	N/A
Miscellaneous Statutes Amendment Act, 1978, S.B.C. 1978, c.28	July 6, 1978 Proclamation	11 amends 69	N/A
Financial Administration Act, S.B.C. 1981, c.15	November 26, 1981 Proclamation	117 repeals 139(2)	Reg. 468/81, Pt. II, V. 24, p.981
Court of Appeal Act, S.B.C. 1982, c.7	September 7, 1982 Proclamation		Reg. 302/82, Pt. II, V. 25, p.428
Labour Code Amendment Act, 1982, S.B.C. 1982, c.59	August 4, 1982 Proclamation		Reg. 354/82, Pt. II, V. 25, p.564
Regulations Act, S.B.C. 1983, c.10	October 26, 1983 Regulation	21, 25 and Schedules 2 and 16 amend 21(2), 29(1)(a), (b), 29(2), 35(c), 42(2), 59(2), 60(c), 61(2), 73(1)(a), 75, 81(5)(a), (6), 142(1), 154	Reg. 393/83, Pt. II, V. 26, p.607
Labour Code Amendment Act, 1984, R.S.B.C. 1984, c.24	June 8, 1984 Regulation	1-19 except 13	Reg. 167/84, Pt. II, V. 27, p.221
	August 27, 1984 Regulation	13	Reg. 274/84, Pt. II, V. 27, p.358
Commercial Arbitration Act, S.B.C. 1986, c.3	July 4, 1986 Regulation	47 repeals 99(4)	Reg. 148/86

TABLE A (cont.)

STATUTORY HISTORY OF THE INDUSTRIAL RELATIONS ACT

(2) AMENDING ACTS (cont.)

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Industrial Relations Reform Act, 1987, S.B.C. 1987, c.24	July 27, 1987 Regulation	The whole Act except S.2(e) and that part of S.60 that enacts S.137.97 to S.137.99	Reg. 246/87
Miscellaneous Statutes Amendment Act (No. 5), 1987, S.B.C. 1987, c.60	Dec. 17, 1987 Royal Assent	9 amends 26(2)	

TABLE B

STATUTES CONFERRING AUTHORITY ON THE COUNCIL

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Industrial Relations Act, R.S.B.C. 1979, c.212	Refer Table A	1-127, 137.1-137.96 138-154	
Public Service Labour Relations Act, R.S.B.C. 1979, c.346	January 3, 1974 Proclamation	1-14, 17-28 (amendments to ss. 4, 11 and 17 yet to be proclaimed)	Reg. 14/74, Pt. II, V. 17, p.160
Assessment Authority Act, R.S.B.C. 1979, c.22	June 20, 1974 Royal Assent	21 (among others)	N/A
Institute of Technology Act, R.S.B.C. 1979, c.199	July 4, 1974 Proclamation	7	Reg. 485/74, Pt. II, V. 17, p.783
Ferry Corporation Act, R.S.B.C. 1979, c.128	June 30, 1976 Royal Assent	23 (among others)	N/A
System Act, R.S.B.C. 1979, c.399	September 1, 1977 Proclamation	17 (among others)	Reg. 349/77, Pt. II, V. 20, p.665
Science Council Act, R.S.B.C. 1979, c.379	June 29, 1978 Royal Assent	1-17	N/A
British Columbia Transit Act, R.S.B.C. 1979, c.421	June 29, 1978 Royal Assent	1-25	N/A
College and Institute Act, R.S.B.C. 1979, c.53	October 10, 1978 Proclamation	30(8)	Reg. 463/78, Pt. II, V. 21, p.1219
	December 15, 1977 Proclamation	42 (among others)	Reg. 607/77, Pt. II, V. 21, p.357
Metro Transit Operating Company Act, R.S.B.C. 1979, c.257	July 31, 1979 Royal Assent	6	N/A

TABLE B (cont.)

STATUTES CONFERRING AUTHORITY ON THE COUNCIL

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Employment Standards Act, S.B.C. 1980, c.10	March 14, 1981 Proclamation		Reg. 35/81 Pt. II, v.24, p.85
Metro Transit Collective Bargaining Assistance Act, S.B.C. 1984, c.33	September 14, 1984 Royal Assent	1-12	N/A

TABLE C

REGULATIONS UNDER THE INDUSTRIAL RELATIONS ACT

Effective Date	Regulation No.	B.C. Gazette References
* July 27, 1987	Industrial Relations (Voting) Regulation	Reg. 247/87, Pt. II, v.30, p.268
* July 27, 1987	Industrial Relations (Practice & Procedure) Regulation	N/A

---

* Reg. 247/87 was enacted by the Lieutenant Governor in Council pursuant to Section 150 of the Act. Reg. 247/87 repealed the Labour Code Regulations, B.C. Reg. 522/73. On July 27, 1987, pursuant to Section 21(2) of the Act, and with the approval of the Minister of Labour and Consumer Services, the Industrial Relations Council made the Industrial Relations (Practice and Procedure) Regulation, which may be referred to as the Industrial Relations Council Rules.

TABLE D

STATUTES AFFECTING THE INDUSTRIAL RELATIONS ACT

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
University Act, R.S.B.C. 1979, c.419	October 7, 1977 Proclamation of s.38, Miscellaneous Statutes Amendment Act, 1977, S.B.C. 1977, c.76	80	Reg. 434/77, Pt. II, V. 20, p.767

Queen's Printer for British Columbia©
Victoria, 1988